116-616

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 983.

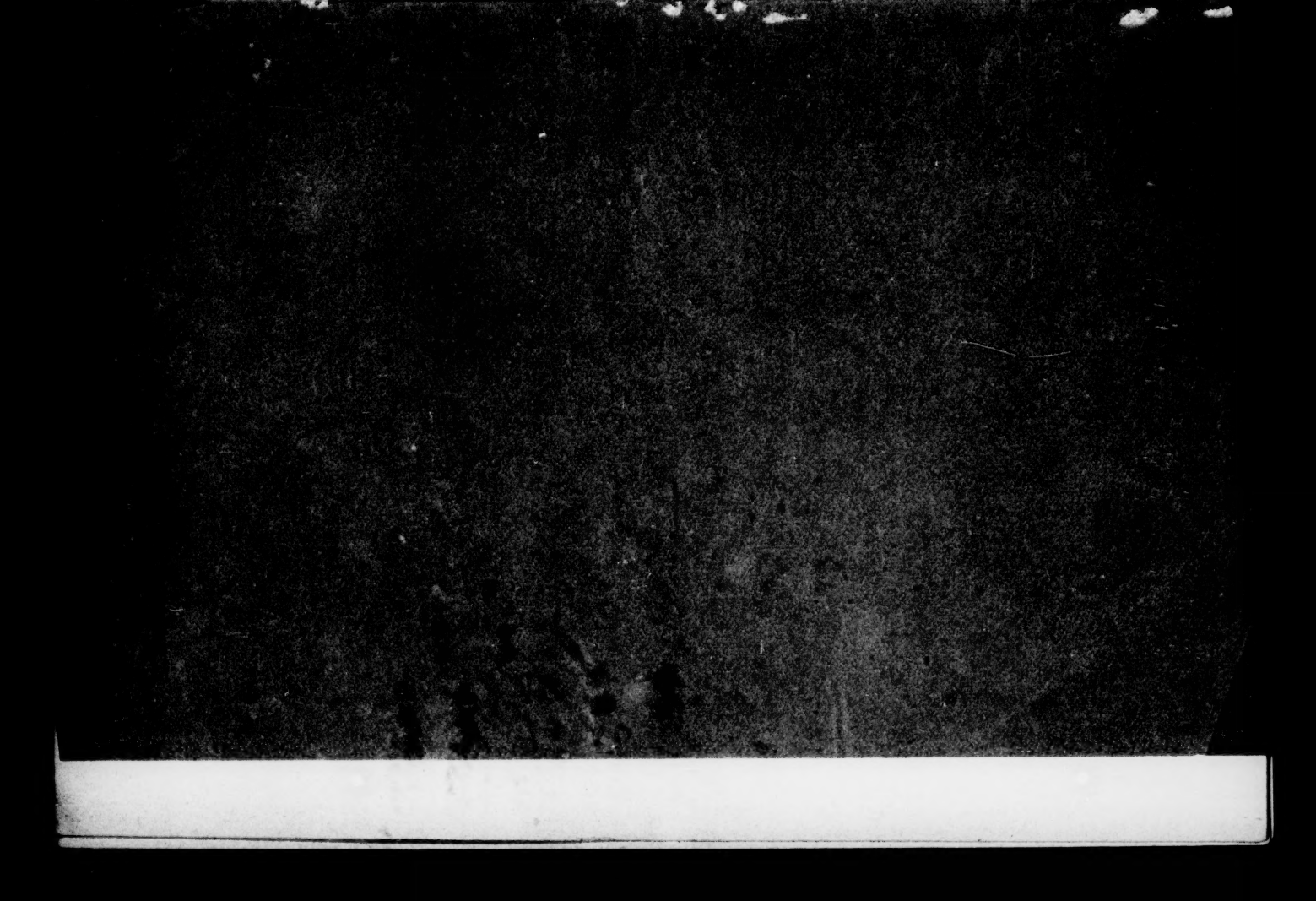
EDWARD A. BOYD AND GEORGE H. BOYD, CLAIMANTS OF THIRTY-FIVE CASES OF PLATE GLASS, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 29, 1885.



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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Thirty-five cases of plate glass and Edward A. Boyd et al., claimants are plaintiffs, and The United States is defendant, a manifest error hath happened, to the great damage of the said plaintiff in error, as by the record appears, we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty-five, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 3d day of July, in the year of our Lord one thousand eight hundred and eighty-five.

TIMOTHY GRIFFITH,
Clerk.

The foregoing writ is hereby allowed.

ADDISON BROWN.

2 (Indorsed:) U. S. Supreme Court. Thirty-five cases of plate-glass and Edward A. Boyd et al., claimants, plaintiffs in error, *against* The United States, defendant in error. Writ of error. Due service of a copy of the within writ of error is hereby admitted. Elihu Root, U. S. att'y. July 6th, 1885. U. S. circuit court. Filed July 6, 1885. Timothy Griffith, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience
3 thereto, do hereby certify that the following pages, numbered from four to sixty-seven, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of Thirty-five cases of plate glass and Edward A. Boyd et al., claimants and plaintiffs in error, *against* The United States, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New

York, in the second circuit, this seventeenth day of July in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and tenth.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

4 United States circuit court, southern district of New York.

THIRTY-FIVE CASES PLATE GLASS AND EDWARD A. BOYD & SON, claimants, plaintiffs in error,
against
THE UNITED STATES, DEFENDANT IN ERROR.
} Transcript of record.

Richard S. Newcombe, attorney for plaintiffs in error, 4 Warren st., New York.

Stephen G. Clarke, of counsel for plaintiffs in error.

Elihu Root, U. S. attorney, for defendant.

U. S. circuit court, filed Ap'l 2, 1885, Timothy Griffith, clerk.

5 UNITED STATES OF AMERICA,
Southern District of New York, ss:

THE UNITED STATES, PLFF. & DEFT. IN ERROR,
vs.
35 CASES OF PLATE GLASS, EDWARD A. BOYD & SONS, claimants, and plffs. in error.

I, Samuel H. Lyman, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file, and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this second day of April, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the said United States the one hundred and ninth.

[L. S.] SAM'L H. LYMAN,
Clerk.

ELIHU ROOT, *U. S. Att'y.*
RICH'D S. NEWCOMBE, Esq., *Proctor for Cl'm'ts & Pl'ff in error.*
STANLEY, CLARK & SMITH, *Counsel.*

6 Claimants' and respondents' costs.

District court of the United States for the southern district of New York.
Filed the 29th day of July, 1884.

Stipulation entered into pursuant to the rules and practices of this court.

Whereas a libel was filed in this court on the tenth day of July, in the year of our Lord one thousand eight hundred and eighty-four by the

United States against 35 cases polished plate glass, for the reasons and causes in the said libel mentioned, and praying that the said property be condemned, forfeited, and sold, and the parties hereto, hereby consenting, and that in case of default or contumacy on the part of the claimants or their surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands; and whereas also a claim has been filed in said cause by Edward A. Boyd & Son:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon appeal by the appellate court.

EDWARD A. BOYD & SON.
HARKNESS BOYD.

Taken and acknowledged this 28' day of July, 1884, before me.
LEOPOLD WOODER,
Notary Public, N. Y. Co.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Harkness Boyd, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of New York; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

HARKNESS BOYD.

Sworn to, this 28th day of July, 1884, before me.
LEOPOLD WOODER,
Notary Public, N. Y. Co.

Recorded the 29th day of July, 1884.
S. H. LYMAN, *Clerk.*

7 Circuit court of the United States of America, for the southern district of New York, in the second circuit.

UNITED STATES OF AMERICA, DEFENDANT IN error,
vs.
35 CASES PLATE GLASS, MARKED (E. A. B.)
Edward A. Boyd & George H. Boyd, cl'm't, plffs. in error.

Bond for damages and costs.

Know all men by these presents that we, Edward A. Boyd and Sons, as principals, and Miles J. Connor and Isaac P. Sutherland, as sureties, all of the city, county, and State of New York, are held and firmly bound unto the above-named defendant in error in the sum of two hundred and fifty dollars, to be paid to the said defendant in error; for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally

firmly by these presents. Sealed with our seals, and dated the 23d day of March, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas the above-named plaintiffs in error have prosecuted a writ of error to the circuit court of the United States for the southern district of New York, to reverse the judgment rendered in the above-entitled suit, by the judge of the district court of the United States for the south' district of New York:

Now, therefore, the condition of this obligation is such that if the above-named plaintiffs in error shall prosecute their writ of error to effect, and answer all damages and costs if they fail to make their writ good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

EDWARD A. BOYD & SONS.
MILES J. CONNOR.
ISAAC P. SUTHERLAND.

Sealed and delivered and taken and acknowledged, this 23' day of March, 1885, before me.

JOHN S. DERBY,
Not'y Public, N. Y. City & Co.

8 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Miles J. Connor and Isaac P. Sutherland, being duly sworn, each deposes and says that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

MILES J. CONNOR.
ISAAC P. SUTHERLAND.

Sworn to this 23d day of March, A. D. 1885, before me.

JOHN S. DERBY,
Notary Public, N. Y. City & Co.

(Indorsed:) Vol. 32, page 51, U. S. district court. United States vs. 35 Cases Plate Glass. Bond for costs on R. A. Newcombe, proctor. App'd, A. Brown. Re'd M'ch 24, 1885.

9 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the district court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between The United States of America, plaintiff, and Thirty-five cases of polished plate glass, marked E. A. B. 1–35, and Edward A. Boyd and George H. Boyd, claimants, a manifest error hath happened to the great damage of the said claimants, as by the record appears, we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States for the southern district

of New York, together with this writ, so that you may have the same at the circuit court room in the post-office building, in New York City, on the first Monday of April, eighteen hundred and eighty-five, in the said circuit court, to be then and there held, that the record and proceedings aforesaid being inspected the said circuit court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of said Supreme Court, the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and eighty-five.

TIMOTHY GRIFFITH,
Clerk.

The foregoing writ is hereby allowed.

ADDISON BROWN,
Judge.

Filed March 24, 1885.

10 District court of the United States of America for the southern district of New York, of July term, in the year one thousand eight hundred and eighty-four.

Before the honorable Addison Brown, the district judge.

On the 10th of July, in the year one thousand eight hundred and eighty-four, comes Elihu Root, as the attorney of the United States for the southern district of New York, to prosecute a civil action in which the United States are interested, in a cause of seizure and forfeiture of property under revenue laws of the United States, and informs the court—

That on the 3d day of July, in the year one thousand eight hundred and eighty-four, William H. Robertson, collector of customs of the port and collection district of the city of New York, seized on land the property described as E. A. B., 1–35, thirty-five cases plate glass, which he now has within said southern district of New York, as forfeited to the United States, for the cases propounded in the following articles:

For that on or about the 3d day of July, 1884, the said goods, wares, and merchandise were imported and brought to the United States, to wit, unto the port of New York, in the third district of the city of New York, from St. Helens, a foreign port or place, by way of Liverpool, in a ship or vessel called the Alaska, and were when so imported subject to the payment of duties to the United States.

For that afterwards, to wit, on or about the 4th day of June, one thousand eight hundred and eighty-four, the owners or agents of the said merchandise, or some other person or persons now unknown to said collector and the said attorney, with intent to defraud the revenue, made or attempted to make his entry of said merchandise, which was then and there subject to duty, and had been imported into the United States

11 within said district of the city of New York from St. Helens, a foreign port or place, by way of Liverpool, in the ship or vessel Alaska, by means of a false or fraudulent invoice, affidavit, letter, and paper, and by means of false statements, written and verbal, by means whereof the United States were deprived of the lawful duties, or a portion thereof, accruing upon the merchandise, or a portion thereof, embraced and referred to in such invoice, affidavit, letter, and paper, and such false

statements, the cases whose contents are herein proceeded against for forfeiture, then and there containing particular articles of merchandise to which said alleged frauds related, contrary to the 12th section of the act of Congress approved the 22d day of June, 1874, entitled "An act to amend the customs-revenue laws and to repeal moities."

That on or about the 4th day of June, one thousand eight hundred and eighty-four, the owners, importers, consignees, or agents of the said merchandise, or some other person or persons now unknown to the collector and attorney, with intent to defraud the revenue, made or attempted to make an entry of such merchandise which was then and there subject to duties, and had been imported into the United States within the said district of the city of New York, from St. Helens, a foreign port or place, by way of Liverpool, in the ship or vessel Alaska, and that the said owners, importers, consignees or agents, and other person or persons unknown, was and were guilty of certain acts and omissions whereby the United States was deprived of the lawful duties, or a portion thereof, accruing on the merchandise, or a portion thereon, affected by said acts and omissions, the cases whose contents are herein proceeded against for forfeiture, then and there containing particular articles of merchandise to which said alleged frauds and said acts and omissions related, contrary to the 12th section of the act of Congress approved June 22, 1874.

And thereupon, and by reason of all and singular the premises aforesaid, the said attorney for the United States, on behalf of the United States, prays the court that due proceedings be issued to enforce
12 the said forfeiture of the said goods, wares, and merchandise, and to give notice to all persons concerned in or interested to appear and show cause on the return day of process why the said forfeiture should not be denied.

ELIHU ROOT,
U. S. Attorney for the Southern District of New York.

Filed July 10, 1884.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the United States court-rooms, in the city of New York, on Friday the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and eighty-four:

Present: The honorable Addison Brown, district judge.

THE UNITED STATES
against
THIRTY-FIVE CASES POLISHED PLATE GLASS.

And now, Edward A. Boyd and George H. Boyd, composing the firm of Edward A. Boyd & Son, intervening as owners of the said 35 cases polished plate glass for the interest of themselves in the said 35 cases polished plate glass appear before this honorable court, and make claim to the said 35 cases polished plate glass, &c., as the same are attached by the marshal under process of this court, at the instance of the United
13 States, and the said Edward A. Boyd & Son aver that they were in possession of the said 35 cases polished plate glass, at the time of the attachment thereof, and that the persons above named, who compose the said firm of Edward A. Boyd & Son, are the true and bona fide

owners of the said 35 cases polished plate glass, and that no other person is the owner thereof; wherefore they pray to defend accordingly.

EDWARD A. BOYD & SON.

RICHARD S. NEWCOMBE,
Proctor for Claimant, No. 4 Warren street, N. Y. City.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edward A. Boyd, being duly sworn, deposes and says that he resides in the city of New York; that he is a member of the firm of Edward A. Boyd & Son, who are the owners of the said 35 cases polished plate glass above named; that the owners of said 35 cases polished plate glass reside in the city of New York; and that this deponent is duly authorized to put in this claim in behalf of the owner of the said 35 cases polished plate glass, and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and to such matters he believes it to be true.

EDWARD A. BOYD.

Sworn to and subscribed this 25th day of July, A. D. 1884, before me,
[L. S.]
LEOPOLD WOODLE,
Notary Public.

Filed July 29th, 1884.

14 *Answer.*

United States district court, southern district of New York.

THE UNITED STATES OF AMERICA
against
THIRTY-FIVE CASES OF PLATE GLASS, marked E. A. B., 1 | 35, Edward A. Boyd and George A. Boyd, claimants.

The answer of the above-named owners and claimants of said goods, wares, and merchandise to the information filed herein in behalf of the United States.

Said claimants intervening as owners as aforesaid, as partners under the firm of E. A. Boyd & Son, reserving all benefit of exception to the manifold errors, uncertainties, and insufficiencies in said information, for answer and plea thereto say that said goods, wares, and merchandise claimed as aforesaid did not, nor did any part thereof, become forfeited in manner and form as in said information alleged.

RICHARD S. NEWCOMBE,
Proctor for Claimants, 4 Warren street, N. Y. City.

CITY AND COUNTY OF NEW YORK, *ss:*

On this, seventh day of August, 1884, personally came Geo. H. Boyd, above named, and made oath that he is one of the owners and
15 claimant above named, and that the foregoing answer and plea is true of his own knowledge.

GEO. H. BOYD.

Sworn to before me this 7th day of August, 1884.
LEOPOLD WOODLE,
Notary Public, N. Y. Co.

Filed August 7, 1884.

United States district court, southern district of New York.

THE UNITED STATES OF AMERICA
against
THIRTY-FIVE CASES OF PLATE GLASS, E. A. Boyd and Geo. H. Boyd, claimants.
} Bill of exceptions.

The issues in this case came on for trial at a term of this court, holden by Hon. Nathaniel Shipman, district judge, at the court room in the post-office building, in the city of New York, on the 21st day of November, 1884.

In the course of the trial evidence was introduced on the part of the Government tending to show that the claimants had a contract to supply plate glass for the Philadelphia post-office and custom-house building, the said contract calling for 9,222 square feet of polished plate glass, and being as follows:

16 *Proposals for glass.*

OFFICE OF SUPERVISING ARCHITECT,
TREASURY DEPARTMENT,
Washington, D. C., November 14th, 1882.

Sealed proposals will be received at this office until 12 m. on the 2d day of December, 1882, for furnishing and delivering, ready for fixing in place, all the plate, double-thick sheet and double-thick ground glass, required for the court-house and post-office at Philadelphia, Pa., in accordance with specification, schedule, and diagrams, copies of which, and any additional information, may be had on application at this office or the office of the superintendent.

JAS. G. HILL,
Supervising Architect.

Specification and conditions of submitting bids.

Proposals must be made in a lump sum for furnishing and delivering in perfect order, ready for fixing in place, all the polished plate, double thick sheet and double-thick ground glass, required for the court-house and post-office at Philadelphia, Pa., in accordance with specification, schedule and diagrams.

PLATE.—The polished plate glass to be of American or foreign manufacture, not more than ¼ thick. The sheet glass to be double-thick American, or glass equal thereto. The ground glass to be double-thick sheet.

QUALITY.—All glass to be of the best quality of their respective kinds, free from waves, specs, discolorations, or any defects, cut to the dimensions and shapes called for by the schedule and diagrams. The sizes given in the schedule are taken from drawings, and actual sizes required may vary slightly from these figures; the exact sizes and shapes will be furnished the successful bidder by the superintendent when the sashes are made.

17 FREE OF DUTY.—Bidders for foreign plate glass must state what reduction will be made in their bids if the plate glass shall be admitted free of duty.

SAMPLES.—Each bidder must submit with his proposal properly-labeled samples of the glass (not less than 12 in. square) he proposes to supply.

The glass for the Chestnut street wing is wanted immediately, and each bidder must state in his proposal the shortest time in which he can deliver the glass for that portion, also the time in which he proposes to deliver the remainder; the quality of the glass and the time of delivery will be considered in awarding the contract.

PRICE EACH ITEM.—Each bidder must price out the several items, and extend each class, forming the total amount of his bid.

BOND.—The successful bidder, if deemed necessary, will be required to give a satisfactory bond for the faithful performance of the work.

The bids should conform in every respect to these requirements, and will be considered only when received from parties, or their agents, who are manufacturers of or dealers in glass.

PAYMENTS.—Payments will be made on delivery of the glass complete and perfect to the entire satisfaction of the superintendent.

RIGHTS RESERVED.—The right to reject any or all bids, or to waive defects, if it be deemed in the interest of the Government to do so, is reserved.

ENDORSEMENT.—Proposals must be enclosed in sealed envelopes endorsed: "Proposals for glass for the court-house and post-office at Philadelphia, Pa.," and addressed to—

JAS. G. HILL,
Supervising Architect.

18 *Schedule.*

PLATE GLASS.

No. of lights.	Sizes.	Description.	American.	Foreign.	
				Excluding import duty.	Including import duty.
		CHESTNUT STREET WING.			
		First story.			
56	52 x 28	Windows }			
112	52 x 5	.. do.... }		$199 32	$464 32
56	28 x 5	...do..... }			
112	5 x 5	...do..... }		36 43	45 44
17	29 x 63	Door and window transoms D		75 94	176 90
34	29 x 61	....do.....do.....D		147 04	342 04
		Second story.			
68	23 x 46	Front windows		175 86	284 80
17	46 x 25	....do... do..transoms		47 78	77 39
		Third story.			
68	23 x 24	Front windows		$168 25	$272 46
17	46 x 20	... do... do..transoms		38 23	61 92
		Fourth story.			
34	29 x 33	Front windows D		79 55	128 82
		NINTH AND MARKET STREETS.			
		First story.			
112	52 x 28	Windows		475 14	828 65
224	52 x 5	....do.... }			
112	28 x 5	....do.... }		72 86	90 90
224	5 x 5	....do.... }			
36	29 x 63	Door and window transoms D		160 84	374 57
72	29 x 61	....do....do....do.....D		311 16	725 13

Schedule—Continued.

PLATE GLASS—Continued.

No. of lights.	Sizes.	Description.	American.	Foreign. Excluding import duty.	Foreign. Including import duty.
		NINTH AND MARKET STREETS—continued.			
		Second story			
144	23 x 46	Windows		$369 41	$528 06
36	46 x 25	Window transoms		101 20	163 87
		Third story.			
144	23 x 44	Windows		356 22	576 74
36	46 x 20	....do....transoms		80 96	131 10
		Fourth story.			
72	29 x 33	Windows D		168 43	272 74
		Fifth story.			
22	54 x 25	Windows D		72 00	117 56
		Amount carried to summary			

SHEET GLASS.

		CHESTNUT STREET WING.			
		Basement.			
4	26 x 46	Exterior door panels			3 96
64	27 x 45	Windows			$63 42
		Second story.			
12	23 x 46	Windows C			9 27
3	46 x 38	.....do...transoms D			4 86
		Third story.			
16	23 x 44	Windows C			12 35
4	46 x 38	Window transoms C, D			6 58
		Fourth story.			
8	23 x 48	Windows C			7 92
8	23 x 48	.....do.. D			7 92
		NINTH AND MARKET STREETS.			
		Basement.			
16	26 x 46	Exterior door panels			15 85
128	27 x 45	Windows			126 63
		First story.			
52	52 x 28	Rear windows			61 78
104	52 x 5	... do			21 90
52	28 x 5	Rear windows			3 79
104	25 x 5	.....do			2 81
15	29 x 63	Door and window transoms D			$28 88
30	29 x 61	... do ....do.....do ....D			57 76
2	33 x 63	Doors Y; transoms D			5 76
4	33 x 62	.....do ....do.. D			11 52
8	9 x 59	Side lights doors X			4 52
		Second story.			
72	23 x 46	Windows C			55 60
40	41 x 46	Windows D			27 00
18	46 x 38	Windows C; transoms D			29 16
10	39 x 38	Windows D; transoms D			14 85

Schedule—Continued.

SHEET GLASS—Continued.

No. of lights.	Sizes.	Description.	American.	Foreign. Excluding import duty.	Foreign. Including import duty.
		NINTH AND MARKET STREETS—continued.			
		Third story.			
72	23 x 44	Windows C			$55 90
18	46 x 38	....do.. transoms D			29 16
40	19 x 44	Windows D			27 00
10	39 x 38	....do.. transoms			14 85
		Fourth story.			
36	23 x 48	Windows C			35 67
36	23 x 48	....do...D			35 67
20	19 x 48	Windows D			13 50
10	19 x 48	....do...D			6 75
10	19 x 46	....do...			6 75
		Fifth story.			
20	18 x 35	Windows B			8 70
20	18 x 35	....do...D			8 70
		Dome.			
16	25 x 25	Lunettes O			8 34
		Amount carried to summary			

SHEET GLASS GROUND.

		CHESTNUT STREET WING.			
		First story.			
14	27 x 45	Transoms of doors *a, b, c*			$15 41
2	27 x 36	Transoms of elevator doors			1 71
		Second story.			
15	45 x 25	Transoms of doors *f, g*			16 50
2	36 x 25	....do.. of elevator doors			1 10
		Third story.			
11	45 x 22	Transoms of doors *i, k, l*			10 03
2	36 x 22	....do ...of elevator doors			1 28
2	44 x 21	....do...of doors X and V.			1 71
		Fourth story.			
11	45 x 16	Transoms of doors *o, p, q*			$6 60
2	36 x 16	....do...of elevator doors			81
		NINTH AND MARKET STREETS.			
		First story.			
10	27 x 45	Transoms of doors *a, b, c*			11 01
2	27 x 36	....do...of elevator doors			1 71
4	23 x 31	W. C. door transoms			2 31
40	14 x 27	W. C. windows			10 80
40	14 x 27	....do...D			10 80
		Second story.			
45	45 x 25	Transoms of doors *f, g*			49 54
2	36 x 25	....do.. of elevator doors			1 50
		Third story.			
42	45 x 22	Transoms of doors *i, k, l*			36 03
2	36 x 22	..... do...of elevator doors			1 28
4	44 x 21	....do...of doors X and V			3 43
2	31 x 16	....do...of passage doors			73

Schedule—Continued.

SHEET GLASS GROUND—Continued.

No. of lights.	Sizes.	Description.	American.	Foreign. Excluding import duty.	Foreign. Including import duty.
		NINTH AND MARKET STREETS—continued.			
		Fourth story.			
39	45 x 16	Transoms of doors *o*, *p*, *q*			$23 40
2	36 x 16	.....do.....of elevator doors			81
		Fifth story.			
4	13 x 40	Panels of doors S			1 62
		Amount carried to summary			
		SUMMARY.			
		Plate glass			
		Sheet glass			
		Sheet glass ground			
		Total			

27 We hereby propose to furnish and deliver the whole of the glass required for the court-house and post-office, at Philadelphia, Pa., in accordance with the specifications, schedule, and diagram, within six weeks from date of acceptance of proposal, for the sum of six thousand seven hundred dollars and three cents ($6,700.03) duty paid, or four thousand one hundred and eighty-one dollars ($4,181) duty free.

J. G. H.
H. G. J.
A. G. L.

EDWARD A. BOYD & SONS.

NEW YORK, *Dec.* 1, 1882.

28 TREASURY DEPARTMENNT,
Office of the Supervising Architect, December 6th, 1882.

EDWARD A. BOYD & SONS,
New York, N. Y.:

GENTLEMEN: Your proposals received and opened at this—on the 2d inst., amounting to forty-one hundred and eighty-one dollars ($4,181) for furnishing and delivering at the post-office, &c., at Philadelphia, Pa., the glass required for that building, in accordance with specification and schedule, is hereby accepted.

The glass to be foreign manufacture, exclusive of import duties, and not more than ¼-inch thick.

Please communicate with the superintendent, John McArthur, jr., who will furnish you with the concrete sizes and shapes, and advise you as to the order in which he desires the glass delivered.

A copy of the specification and schedule is herewith enclosed.

Very respectfully,

JAS. G. HILL,
Supervising Architect.

Evidence was further introduced on behalf of the plaintiff showing that the first delivery of glass under the contract was in February, 1883, and that practically the last was in February, 1884. That the full amount of plate glass furnished to said building was 9,454 square feet, as shown by the memorandum bills furnished by the claimants. Defendant claimed that the superintendent had called for more feet.

Evidence was further introduced showing that the claimants applied to the supervising architect for a free permit for the thirty-five cases in suit upon the ground that it was to replace in part glass already furnished by the claimants for this building, and upon the request of said Supervising Architect, the Secretary of the Treasury ordered the collector at New York to allow a free entry of the thirty-five cases in question.

29 Evidence was further introduced showing that the glass contained in these thirty-five cases amounted to 26,978 square feet of polished plate glass of large stock sizes, on which the duties would amount to $13,489, and the full value to $25,220.84. This shipment was by the S. S. Alaska.

Evidence was further introduced showing that the claimants, before making the aforesaid application for the free entry of the said thirty-five cases in suit, in like manner had previously applied to the Supervising Architect of the Treasury for a free permit for twenty-nine other cases, upon the ground that they were to replace in part glass already furnished to the same building, and that upon the request of the Supervising Architect the Secretary of the Treasury had ordered the collector at New York to allow a free entry of the said twenty-nine cases, and that a free entry thereof had been made by the claimants. This shipment was by the steamship Baltic.

The application of the claimants to the Supervising Architect for the order directing the admission of entry free of duty of the twenty-nine cases by the Baltic, was made through ono Lawrence E. Gannon, the agent of the claimants at Washington. The claimants wrote to said Gannon the following letter:

[Office of Edward A. Boyd & Sons, plate and sheet glass warehouse, &c., &c., &c.]

NEW YORK, *April 1st*, 1884.

L. E. GANNON, Esq're., *Washington, D. C.:*

DEAR SIR: We are in receipt of cable from Europe stating that twenty-nine cases plate glass have been shipped to us by steamer Baltic, marked G. H. B., 1 to 29.

The steamer Baltic is due here at this port April 4th. This glass is intended to take the place of a portion of the glass supplied by us

30 from stock for the United States court-house and post-office at Philadelphia, Pa. You will please send us by return of mail the free permit to enter the goods at this port. Please let this matter have your prompt attention and wire us when the permit will go forward, and oblige, yours, very truly,

(Signed) EDWARD A. BOYD & SONS.

Pursuant to the instructions in said letter, Gannon wrote a letter on the claimants' letter paper, dated New York, April 2, 1884, to M. E. Bell,

Supervising Architect of the Treasury Department, signing thereto the firm-name of the claimants.

[Office of Edward A. Boyd & Sons, plate and sheet glass warehouse, &c., &c., &c.]

NEW YORK, *April 2d*, 1884.

M. E. BELL, Esq.,
Supervising Architect, Treasury Department, Washington, D. C.:

SIR: There is expected at the port of New York, per steamer Baltic, to arrive the 4th inst., twenty-nine cases of plate glass, numbered from 1 to 29, inclusive, and marked G. H. B.

This glass is intended to replace, in part, glass supplied by us from stock, for the construction of the U. S. court-house and post-office building at Philadelphia, Pa. We have therefore to request that you will cause the necessary instructions to be given to the collector of the port of New York to admit the same free of duty, and to deliver to us upon its arrival.

Very respectfully,
(Signed) ED. A. BOYD & SONS.

It was further in evidence that in consequence of an inquiry made by the architect's office as to how much more there was to be imported in addition to the twenty-nine cases, which inquiry was transmitted to
31 the claimants by Gannon, he received a letter from them which was received in evidence, dated New York, April 11, 1884.

[Office of Edward A. Boyd & Sons, plate and sheet glass warehouse, &c., &c., &c.]

NEW YORK, *April 11th*, 1884.

L. E. GANNON, Esq., *Washington, D. C.:*

DEAR SIR: In reply to your memo. of 10th inst., we beg to say that we telegraphed you on the 3d, as follows: "L. E. Gannon, 615 15th st., Washington, D. C. There was shipped to Philadelphia 81 cases polished plate glass; hurry on permit. Answer." Signed E. A. Boyd & Sons; and we now beg to confirm this message, and to repeat that there was 81 cases of plate glass shipped to the Phila. post-office, and you can so state to Mr. Jacobs, and obg. yours, most truly,
(Signed) E. A. BOYD.

In consequence of the application of the claimants, the following letters were written by the Supervising Architect to the Secretary, and by the Secretary to the collector at the port of New York:

(1) Letter of the Supervising Architect to the Secretary, dated April 3, 1884:

TREASURY DEPARTMENT,
Office of the Supervising Architect, April 3d, 1884.

Hon. CHARLES J. FOLGER,
Secretary of the Treasury:

SIR: Messrs. E. A. Boyd & Sons, contractors for the supply of glass for the court-house and post-office at Philadelphia, Pa., were, under the

terms of their contract, required to furnish the plate glass for the
32 Chestnut street front immediately, and therefore took the glass for this purpose from stock. Their contract was in the sum of four thousand one hundred and eighty-one dollars ($4,181), the glass to be supplied duty free.

By letter of the 2d instant, I am advised that there has been shipped, per steamer Baltic, expected to arrive on the 4th instant at the port of New York, twenty-nine cases of plate glass, numbered from one to twenty-nine, inclusively, marked G. H. B., said shipment being to replace, in part, the glass supplied from stock, under the contract above referred to.

Please instruct the collector of the port to admit the glass duty free.

To permit a proper identification of the glass I enclose a copy of the schedule and specifications showing quantity and character of glass and the conditions upon which supplied.

Very respectfully,

H. G. JACOBS,
Acting Supervising Architect.

(2) Letter from the Secretary to the collector at New York, dated April 4, 1884.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., April 4, 1884.

COLLECTOR OF CUSTOMS, NEW YORK:

SIR: By request of the Acting Supervising Architect, dated the 3d instant, you are hereby authorized to admit to entry, free of duties and charges, twenty-nine cases of plate glass, numbered from one to twenty-nine, inclusive, and marked G. H. B., said goods having been imported at your port, in the Baltic, for the use of the post-office and court-house at Philadelphia.

Very respectfully,

H. F. FRENCH,
Acting Secretary.

(No. enc.)

(3) It was further in evidence that the collector acted upon the order of the Secretary, that the claimants made a free entry of the twenty-
33 nine cases by the Baltic, and that the said twenty-nine cases were delivered to them without the payment of any duties.

It further appeared that the entry by the Baltic was made upon the Secretary's letter before given; and the bill of lading, and that no invoice was produced to the collector or asked for by him.

That thereafter, in regard to the importation by the Alaska, the claimants wrote the following letter to said Gannon:

[Office of Edward A. Boyd & Sons, plate and sheet glass warehouse, &c., &c., &c.]

NEW YORK, *May* 29, 1884.

L. E. GANNON, Esq're, *Washington, D. C.:*

DEAR SIR: We are just in receipt of advices informing us that the steamer Alaska is bringing us thirty-five cases of plate glass, marked E. A. B., 1 to 35.

This glass is to take the place of that furnished to the court-house and post-office at Philadelphia. We furnished and shipped in all eighty-one cases. We have already entered twenty-nine, which, with the thirty-five now asked for, makes a total of sixty-four. Please see that the necessary instructions are sent to the collector here to admit this glass free of duty.

"Steamer Alaska, thirty-five cases plate glass, marked E. A. B., 1 to 35."

Give this matter your prompt attention.

Yours very truly,

(Signed) EDWARD A BOYD & SONS.

And, in pursuance of the instructions in that letter, Gannon wrote to the Supervising Architect as before.

34 [Office of Edward A. Boyd & Sons, plate and sheet glass warehouse, &c., &c., &c.]

NEW YORK, *May 29th*, 1884.

C. M. BELL, Esq.,

Supervising Architect, Treasury Department:

SIR: We are informed that the steamer Alaska is bringing us 35 cases of plate glass marked E. A. B., and numbered 1 to 35, imported to replace that furnished from stock for the U. S. court-house and p. o. building at Philadelphia, Pa.

This importation and the 29 cases heretofore admitted makes 64 of the 81 cases furnished to said building, leaving a balance of 17 cases yet to be imported.

We have the honor to request that the necessary instructions may be sent without delay to the collector of the port of New York to admit the above 35 cases free of duty in the usual manner. The Alaska is expected to arrive to-morrow.

Very respectfully,

(Signed) E. A. BOYD & SONS.

And the Supervising Architect wrote to the Secretary:

TREASURY DEPARTMENT,

Office of the Supervising Architect, May 31, 1884.

Hon. CHAS. J. FOLGER,

Secretary of Treasury:

SIR: By letter of the 29th instant, this day received from Messrs. E. A. Boyd & Sons, contractors for the supply of plate glass for the court-house and post-office building at Philadelphia, I am advised that there is now on board the steamer Alaska, understood to have arrived at
35 the port of New York yesterday, thirty-five cases plate glass, marked E. A. B., and numbered from 1 to 35, inclusive, imported to replace glass furnished from stock for the building named, being a second shipment on this account.

Upon my request of April 3d last, the first shipment was admitted free of duty, and I have the honor to request that instructions be given to the collector of the port of New York to also admit this second shipment free of duty.

With letter of April 3d was enclosed a copy of schedule and specifications of contract, showing quality and quantity of glass to be supplied, that a proper identification of the shipment might be had.

Very respectfully,

M. E. BELL,
Supervising Architect.

And the Secretary wrote to the collector at New York:

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, D. C., May 31, 1884.

COLLECTOR OF CUSTOMS, NEW YORK:

SIR: By request of the Supervising Architect of the Treasury Department, dated this day, you are hereby authorized to admit to entry, free of duties and charges, thirty-five (35) cases plate glass, marked E. A. B., numbered from 1 to 35, inclusive, said goods having been imported at your port in the Alaska for the use of the court-house and post-office building at Philadelphia.

Very respectfully,

H. F. FRENCH,
Acting Secretary.

(No enc.)

It is further in evidence that the collector acted on said order of
36 the Secretary, and the claimants made a free entry of the thirty-five cases by the Alaska, but before they received them from the collector the goods were seized, and subsequently the free permit was revoked.

The district attorney thereupon offered in evidence the following order:

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on the 9th day of October, 1884:

Present: The honorable Addison Brown, the district judge.

THE UNITED STATES OF AMERICA
against
E. A. B., 1–35, THIRTY-FIVE CASES OF PLATE GLASS.

Whereas the attorney of the United States for the southern district of New York has filed in this court a written motion in the above-entitled action, showing that said action is a suit or proceeding other than criminal, arising under the customs revenue laws of the United States, and not for penalties, now pending undetermined in this court, and that in his belief a certain invoice or paper belonging to and under the control of the claimants herein will tend to prove certain allegations set forth in said written motion, hereto annexed, made by him on behalf of the United States in said action, to wit, the invoice from the Union Plate Glass Company or

its agents, covering the twenty-nine cases of plate glass marked
37 G. H. B., imported from Liverpool, England, into the port of New York in the vessel Baltic, and entered by E. A. Boyd & Sons at the office of the collector of customs of the port and collection district aforesaid on April 7th, 1884, on entry No. 47108.

Now, therefore, by virtue of the power in the said court vested by section 5 of the act of June 22d, 1874, entitled "An act to amend the customs-revenue laws and to repeal moieties," it is ordered that a notice under the seal of this court, and signed by the clerk thereof, be issued to the claimants, requiring them to produce the invoice or paper aforesaid before this court in the court-rooms thereof in the United States post-office and court-house building in the city of New York on October 16th, 1884, at eleven o'clock a. m., and thereafter at such other times as the court shall appoint, and that said United States attorney and his assistants and such persons as he shall designate shall be allowed before the court, and under its direction and in the presence of the attorneys for the claimants, if they shall attend, to make examination of said invoice or paper and to take copies thereof; but the claimants or their agents or attorneys shall have, subject to the order of the court, the custody of such invoice or paper, except pending such examination.

ADDISON BROWN.

The following proceedings were then had:

COUNSEL FOR CLAIMANTS. I object to the order as immaterial. We made a return to the order and produced the papers in court, or, rather, we have made two returns to it and produced certain papers. The order itself, to the best of our ability, we have complied with. We submit that we have complied with the order as made, to the best of our ability, and that so far as not complied with we are responsible to the court, and that the order itself is not evidence. What we have done will appear by the two returns that we have made, and what we did produce I hold in my hand now, subject to the order of the court.

38 THE COURT. I can't know whether you complied with the order unless the order is in evidence.

COUNSEL FOR CLAIMANTS. It is only in certain contingencies that the order is to be taken into consideration, namely, if we did not comply. The first return was that we were not able to find the paper that was called for and that it was not in our possession, but that we had taken measures to and would do the next best thing, and that was to obtain a duplicate of it. Then there was an order for an examination as to the truth of our return and pending that examination the duplicate of the invoice was received, and when received we produced it, making the second return. The two returns will show exactly what was done.

DISTRICT ATTORNEY. We made an application under the section for the production of the original invoice of the twenty-nine cases which were sent to Messrs. E. A. Boyd & Sons. The order which I offer is an order that they produce that invoice or show cause why they do not. They came in and made return that they could not find the invoice. Thereupon the court made an order for the examination of the parties to determine whether their return should be accepted. Pending the examination they cabled to England and brought over a copy, and the result was a copy.

COUNSEL FOR CLAIMANTS. Not a copy, but a duplicate from the party who made the original.

DISTRICT ATTORNEY. I suppose I am entitled to show as a part of my proof, in order that the court and jury may have the precise legal effect and situation of this proof as secondary evidence, the steps by which the proof comes into court. I can't put this man on the stand and ask whether they admit that this is a duplicate. I must give from the files of the court the steps which have brought that paper here. First an
39 order, then a return and a filing the paper under the return, and then we have what it is. I propose to follow the order with the return.

THE COURT: I think the order is admissible. It is not offered for the purpose of showing that the allegations contained in the petition are true.

DISTRICT ATTORNEY. I do not offer the petition.

THE COURT. It is admitted simply for the purpose of proving that this paper which counsel proposes to offer by and by is a paper admitted by the defendants to be a genuine paper.

Whereupon counsel for claimants excepted, and the exception was duly allowed.

Counsel for plaintiff further objected that section 5 of the act of June 22, 1874, was without authority and void, and an exception upon that ground was duly allowed.

The district attorney thereupon offered in evidence a return, being plaintiff's Exhibit No. 23, as follows:

District court of the United States, so. dist. of N. Y.

THE UNITED STATES
vs.
E. A. B., 1–35, THIRTY-FIVE CASES OF PLATE GLASS.

The return of Edward A. Boyd and George H. Boyd, claimants, to the notice and order to produce invoice from Union Plate Glass Works of 29 cases plate glass by the Baltic, April 7, 1884, entry No. 47108.

The said complainants come into court and for return to above notice say they are willing to produce said invoice, but having made
40 diligent search therefor they have not been able to find the same among their papers.

That said invoice was a mere memorandum invoice and that they had no special reason for preserving the same, and they believe it to be lost or destroyed, and they are not now able to produce the same.

As they verily believe, from their knowledge of the business, an exact duplicate thereof can be obtained from the Union Plate Glass Co., and they are ready and willing, at their own expense, to forward forthwith a cable dispatch, as follows: "Mail duplicate invoice 25 cases, steamer Baltic, March last," or such other similar dispatch as the court may order or suggest; and that on receipt of said duplicate they will produce the same in obedience to said order.

EDWARD A. BOYD.
GEO. H. BOYD.

So. DIST. OF N. Y.,
City and County of New York, ss:

Geo. H. Boyd, being duly sworn, says that he is one of the claimants above named, and that he has read the foregoing return, and that the statements therein contained are true.

GEO. H. BOYD.

Sworn to before me this 21st day of Oct., 1884.

JOHN F. MOINEHAN,
Notary Public N. Y. Co.

To which counsel for claimants objected upon the same grounds before stated as to the introduction of the order. The court overruled the objection, admitted said return; the claimants excepted on the grounds stated, and the exception was duly allowed.

The district attorney then offered in evidence a further return to said order, as follows:

41 District court of the United States, so. dist. of New York.

THE UNITED STATES
vs.
E. A. B., 1–35, THIRTY-FIVE CASES OF PLATE Glass, E. A. Boyd and Geo. H. Boyd, claimants.

And now come Edward A. Boyd and George H. Boyd, and, by leave of the court for that purpose first had and obtained, make this their further return to the notice and order to produce invoice from Union Plate Glass Company of 29 cases plate glass, by the Baltic, April 7, 1884, entry No. 47108.

1st. On the 21st day of October, 1884, said Boyds sent a cable dispatch as follows: "October 21, 1884. Spencer, St. Helens: Send first mail duplicate invoice 29 cases, steamer Baltic, March last. Boyd."

That the address "Spencer" is a code word for the "Union Plate Glass Co., Pocket Nook, St. Helens."

2d. That, in response to said telegram or cable dispatch, said Boyds received, addressed to them by their firm name of E. A. Boyd & Sons, from the Union Plate Glass Co., a letter, dated October 23d, 1884, acknowledging the receipt of said cablegram, and enclosing said duplicate invoice. Said letter and enclosure was received November 3d, 1884, at the post-office in New York. Said Boyds produce said letter and envelope in which same was received.

3d. Said duplicate invoice, to the best of the knowledge and belief of said Boyds, is a duplicate of the invoice called for by said order,
42 and contains an exact and accurate account of the glass contained in said 29 cases by the Baltic.

4th. Said Boyds produce said duplicate invoice here in court, in lieu of the original invoice called for in said notice and order, which original they cannot find, and pray that said duplicate may stand as and for the original, and offer to enter into such stipulation as the court may direct, to enable it to be so taken in evidence.

EDWARD A. BOYD.
GEO. H. BOYD.

So. Dist. of New York,
City & County of N. Y., ss:

Geo. H. Boyd, being duly sworn, says that he is one of the claimants above named; that he has read the foregoing return, and that the statements therein contained are true.

GEO. H. BOYD.

Sworn to before me this 5th day of November, 1884.
SAM'L H. LYMAN, *U. S. Comm'r.*

To the introduction of which return counsel for the claimants objected, upon the same grounds as to the other papers. The court overruled the objection, and admitted said return in evidence; whereupon counsel for claimants excepted, and the exception was duly allowed.

Whereupon the district attorney called for the papers referred to in the return.

Counsel for claimants produced the same, saying that they produced, in obedience to the order, the paper specified in the second return, plaintiff's Exhibit No. 24.

43 Thereupon the district attorney said:

The District Attorney. I offer this paper in evidence, in connection with the order and return.

Counsel for Claimants. I object on the ground that, in a suit for forfeiture, no evidence can be compelled from the claimants themselves, and also that the statute, so far as it compels production of evidence to be used against the claimants, is unconstitutional and void.

The objection was overruled, and the papers admitted in evidence; to which ruling and admission counsel for claimants excepted, and the exception was duly allowed.

Counsel for the claimants further objected that the evidence was immaterial and irrelevant; which objection was overruled, the claimants excepted, and the exception duly allowed.

44 The invoice produced was as follows:

Union Plate Glass Works,
Pocket Nook, St. Helens, Lancashire, 19' March, 1884.

Mess. E. A. Boyd & Sons, New York, bought of the Union Plate Glass Company, limited.

SUMMARY OF 29 CASES CONT'G POL. GLASS STOCK SIZES.

	£ s. d.	%	£ s. d.	£ s. d.
	20,579 11 4	1/1	1,972 4 11	
	5,362 9 7	1/10	491 11 9	
390 panes	25,942 8 11	.....	2,463 16 8	
		10	246 7 8	
			2,217 9	
		5	110 17 5	
			2,106 11 7	
		5	105 6 7	
			2,001 5	
		2½	50 8	
			1,951 4 4	
		⅛ of 1	12 3 11	
				1,939 5
Cases marked G. H. B., Nos. 1–29. To cases	2,647 8 6	6d.	pr. ft ...	66 3 10
(Per rail to L'pool for shipment.)				2,055 4 3

The remainder of the paper contained a detailed account of the number and sizes of the plates, and is omitted by consent.

The before-named papers, being Exhibits Nos. 22, 23, 24, and 25, were then read in evidence.

45 Evidence was also introduced showing that the twenty-nine cases described in the foregoing invoice, Exhibit No. 25, were the same twenty-nine cases hereinbefore mentioned as imported by the Baltic and entered free of duty, and that the contents of the said twenty-nine cases, as shown by the said duplicate invoice, amounted to 25,942 square feet of polished plate glass, on which the duties would have amounted to $12,971, and the full home value $23,313.26.

It was further in evidence that the cases imported by the Baltic and the Alaska each contained from 800 to 1,000 square feet of plate glass. It was also in evidence that the cases sent by the claimants to Philadelphia contained from 100 to 250 square feet of plate glass.

No evidence was introduced tending to show that any other statements or representations were made by the claimants or in their behalf in respect to obtaining the free permit for the thirty-five cases by the Alaska than those contained in the exhibits heretofore set forth.

Thereupon the evidence being closed, the court charged the jury as follows:

SHIPMAN, J.:

GENTLEMEN OF THE JURY: This is an information by the United States for the forfeiture of thirty-five cases of plate glass, which were imported into this port by the claimants, E. A. Boyd & Sons, on or about the 4th day of June, 1884, upon the ground that the importers, with actual intent to defraud the revenue, made, or attempted to make, an entry of the goods by means of fraudulent letters or papers, or by means of false written statements, whereby the United States were deprived of the lawful duties accruing upon such merchandise embraced and referred to in such false letters or statements.

The act which is particularly charged in the evidence is the entry, or an attempt to make an entry, duty free, of said glass by means of a permit obtained from the Secretary of the Treasury by false written state-

46 ments to the Supervising Architect that the glass was to replace an equal portion of glass which had been furnished from the duty-paid stock of the claimants to the post-office building in Philadelphia, and which by the understanding between the claimants and the Government was to be furnished and paid for free of duty.

There is no question that the claimants made an entry duty free by means of a free permit theretofore obtained from the Secretary. If the claimants wilfully obtained that permit by means of false statements to the Supervising Architect, made for the purpose of fraudulently obtaining the permit with actual intent to defraud the revenue, by means of which the Government was deprived of the lawful duties accruing upon the goods embraced in such false statements, and actual intent is found by you, then such merchandise should be forfeited to the United States.

It is a fact that the Government was deprived at the date of the entry, and thus far has not received, but has been deprived of, the duties upon the thirty-five cases. It is not material that at some time hereafter the Govern-

ment may obtain the duties, or that they now have possession of the goods and a lien for the duties thereon.

The obtaining of a free permit by alleged false representations is the foundation fact in the Government's case. I regard the two forms in which the case is put in the two different counts as merely different methods of technically stating the same facts. The act which was done under both counts was the falsely and fraudulently obtaining a permit. Therefore I do not regard it as necessary for you to find whether fraudulent omissions were or were not made in addition to the wilful acts of which I have spoken; that is to say, I regard the allegation of omission as a technical matter which becomes, if fraudulent acts are affirmatively found by you, an immaterial matter, and therefore it is not worth while for your deliberations to be burdened with any discussion with regard to whether there were omissions or not.

It is clearly proved that the claimants, E. A. Boyd & Sons, were
47 the successful bidders to supply the post-office building at Philadelphia with the glass that has been specified in the schedule in evidence, and amounting to 9,222 square feet, for the sum of $4,181, duty free; that 9,222 feet and an additional amount to supply breakage, amounting in all to about 9,454 square feet, or thereabouts, were actually furnished and went into the building, and that an additional number of 1,228 square feet, or thereabouts, were cut upon a subsequently countermanded order. So that about 10,700 square feet were actually furnished, or prepared to be furnished, by E. A. Boyd & Sons under the contract. This amount of 10,700 square feet I do not state as accurate and exact. It may exceed 10,000 feet; it may exceed it by a thousand or two thousand feet; that is not material.

It is further proved that a free permit for twenty-nine cases of glass by the Baltic was asked of the Supervising Architect by E. A. Boyd & Sons upon the ground that that glass was imported to replace a corresponding amount of glass which had been furnished to the Philadelphia post-office building from the duty-paid stock of the contractors; that by means of this letter and written statement, so directed to be made by E. A. Boyd & Sons, a free permit for the twenty-nine cases was obtained from the Secretary of the Treasury; that the whole amount of glass contained in those cases, provided none was broken, was 25,942 square feet, of the value of about 2,005 pounds sterling, being about $10,000; that upon the further representation that eighty-one cases had been furnished from the duty-paid stock of E. A. Boyd & Sons to the Philadelphia building; that the twenty-nine cases already mentioned were to replace a corresponding number; that thirty-five more cases were to arrive by the Alaska to replace a corresponding number of the eighty-one cases; and which representations were made in writing by E. A. Boyd & Sons or their authorized agent, directed so to do by his employers, another free permit was obtained from the Secretary of the Treasury for the entry free of duty of these last-named thirty-five cases, which are the subject of the present information.

48 It is further proved that E. A. Boyd & Sons used these permits and attempted to obtain, and did obtain, an entry free of duty of the thirty-five cases, and that the quantity of glass therein was 26,978 square feet or 26,979 square feet, of the value of about $25,000—the home value. The amount of duty thereon, if duty paid, would be about $13,000.

There is no claim that these two letters were not written to the Supervising Architect by the direction and authority of the importers; that the statements therein made were not authorized by them; that the free permits were not obtained by means of these written statements; that the entry of the goods was not attempted to be made free of duty; and that the whole quantity of glass, if unbroken, which was contained in the twenty-nine cases and the thirty-five cases was at least 50,000 square feet, of the value of $35,000, and dutiable at least at $13,000, perhaps more; whereas the glass furnished and cut under the contract was under 12,000 square feet, of the value of perhaps $5,000, duty free, and that the duties on these 12,000 square feet would have been about $2,500; and that no attempt is made to show that E. A. Boyd & Sons were not aware of the nature of the statements which they made.

That, gentlemen, is the claim of the Government.

And in reply to this array of facts the defense is in substance that no actual intention to defraud has been proved; and it is true that the burden is upon the plaintiffs to establish the actual intention to defraud by a fair preponderance of evidence. It is for you to find an actual intention to defraud; and as applicable to the disputed facts in this case an actual intent to defraud existed if the claimants knew that these thirty-five cases were dutiable, and, in order to avoid the payment of duty and obtain a free permit, falsely and knowingly represented to the Supervising Architect that in substance they were not dutiable, and used the free permit thus fraudulently obtained.

The claimants, in order to support their defense, say that two-
49 thirds of the twenty-nine cases were broken and worthless when they arrived, and have presented five witnesses to prove that fact. In reply to that the Government controverts the statement or the evidence that these twenty-nine cases were broken. But I shall not dwell upon that.

The Government also shows in reply that on April 11, immediately after the permit for the twenty-nine cases was asked for, in reply to a request from the architect, the importers stated the number of cases as furnished to the Philadelphia building at eighty-one, and that to replace this amount three invoices of twenty-nine cases, thirty-five cases, and seventeen cases were to be imported, and that no mention of breakage in these twenty-nine cases was ever made to the architect as a reason for wanting other cases to be admitted free of duty; whereas the entire ground of the request was that the eighty-one cases were to replace a similar amount furnished to the Philadelphia building.

Again the Government says that admitting that two-thirds of the twenty-nine cases were broken, still a very large amount was sought to be admitted duty free in excess of the comparatively small amount furnished to the Government, and the amount that is claimed to have been broken.

Next the claimants say that in consequence of wastage in cutting, some 22,500 feet were used up in supplying the orders of the Government for the building. The Government says that this is a ridiculously large statement for wastage, and so large that it shows on its face that it is an untruthful statement.

It is required by statute that I submit to you as a distinct and separate proposition, whether the alleged acts were done with an actual intent to

defraud the United States, and to require of you a separate finding on that proposition. What an actual intent to defraud is I have already stated to you. Therefore in returning your verdict you will answer the question which I will hand you, yes or no. Unless an affirmative answer is given no forfeiture can be imposed.

In my judgment it only remains for me to make one suggestion
50 more, and that is this—that where the evidence forces you to the conviction that fraud has been clearly proved it is your duty to say so. It is weakness not to say so. Not to say so is trifling with your oath—with your duty to the public, of which you are members, with your duty to enforce commercial integrity in this great metropolis, and with your duty to the Government, to which every man owes his support.

Counsel for claimants requested the court to instruct the jury, among other things, as follows:

That the claimants having requested the Supervising Architect to obtain for the goods a free permit, and he having requested the Secretary of the Treasury to issue such permit, and having transmitted to him with that request the necessary data from which the Secretary might have determined whether such permit ought to be granted, the goods in question are not liable to forfeiture, even though the jury find such permit to have been improvidently granted.

The court refused to instruct the jury, except as in the charge, to which ruling counsel for claimants excepted, and the exception was duly allowed.

Counsel for claimants requested the court to instruct the jury as follows:

The entry in question having been made upon the bill of lading and letter of the Acting Secretary of the Treasury to entitle plaintiff, to recover the jury must find upon a fair preponderance of the testimony a false statement in those documents, and that such false statement was procured by the act or acts of the claimants or their agents.

The court refused to instruct the jury, except as in the charge; counsel for claimants excepted th reto, and the exception was duly allowed.

Counsel for claimants requested the court to instruct the jury as follows:

That the mere fact that defendants claimed to be entitled to enter goods free of duty unaccompanied by any false statements as to the character, quality and quantity of the goods is not sufficient to entitle the Government to recover.

51 The court refused to instruct the jury, except as in the charge; counsel for claimants excepted thereto, and the exception was duly allowed.

The jury returned a verdict for plaintiff, and found specially under the charge of the court that the alleged acts were done with an actual intent to defraud the United States.

And because none of said exceptions so offered and made appear upon the records of said trial, therefore, on the prayer of the claimants by their counsel, the said judge has signed and sealed this bill of exceptions nunc pro tunc, as of the 26th day of November, 1884.

[L. S.] N. SHIPMAN, *Judge.*

At a stated term of the district court of the United States of America, for the southern district of New York, held at the United States court-rooms in the city of New York, on Monday, the 23d day of March, in the year of our Lord one thousand eight hundred and eighty-five.

Present, the honorable Addison Brown, district judge.

THE UNITED STATES
against
E. A. B., 1-35, THIRTY-FIVE CASES OF PLATE Glass, E. A. Boyd, & G. H. Boyd, cl'ts.

The jury empanneled to try the issue joined between the United States of America, informants, against thirty-five cases of plate glass, marked E. A. B., 1-35. Edward A. and George H. Boyd, claimants,
52 having, by their verdict, found for the United States, condemning the said goods, it is thereupon, on motion of the United States district attorney, ordered, that the above-mentioned goods, wares, and merchandise be, and the same are hereby accordingly condemned as forfeited to the United States.

And it is further ordered, that unless an appeal or writ of error be taken to this decree within the time limited by law and prescribed by the rules and practice of this court that the clerk of this court issue a writ of venditioni exponeas to the marshal of the district, returnable on the first Tuesday of May next, and that on the return of said writ he distribute the proceeds according to law.

[L. S.] ADDISON BROWN.

(A true copy.)

SAM'L H. LYMAN, *Clerk.*

(Endorsed:) Filed March 23d, 1885.

United States circuit court, southern district of New York, April term, 1885.

E. A. B., 1-35, THIRTY-FIVE CASES OF POLished Plate Glass, Edward A. Boyd, and George H. Boyd, claimants, plaintiffs in error,
against
THE UNITED STATES, DEFENDANT IN ERROR.
} Assignment of error.

And now, on the first Monday of April, 1885, before the justices of said court, come Edward A. Boyd and George H. Boyd, claimants, by
53 their attorney, and say that by the record aforesaid there is error in the various rulings hereinbefore excepted to; also in this, that judgment was rendered for the defendant in error and not for the plaintiffs in error.

Wherefore plaintiffs in error pray that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, as the same more fully appear therein, may be reversed and annulled.

RICHARD S. NEWCOMBE,
Attorney for Plaintiffs in Error.

Filed March 24, 1885.

United States circuit court, southern district of New York, April term, 1885.

E. A. B., 1–35, THIRTY-FIVE CASES OF POLISHED PLATE GLASS and EDWARD A. BOYD and GEORGE H. BOYD, claimants, plaintiffs in error, *against* THE UNITED STATES, DEFENDANTS IN ERROR. } Joinder in error.

And afterwards, to wit, on the first Monday of April, 1885, the United States, by Elihu Root, its attorney, comes into court and says that there is no error either in the record or proceedings aforesaid, or in the judgment aforesaid; and he prays that this court may proceed to examine the record and proceedings aforesaid as to the matter assigned for error, and that the judgment herein be in all things affirmed.

ELIHU ROOT,
U. S. District Attorney, Attorney for Defendant in Error.

Filed March 24, 1885.

54 UNITED STATES OF AMERICA, *ss:*

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States for the southern district of New York, to be holden at the post-office building in the city of New York, on the first Monday of April, eighteen hundred and eighty-five, pursuant to a writ of error, filed in the clerk's office of the district court of the United States for the southern district of New York, wherein Edward A. Boyd and George H. Boyd, claimants of thirty-five cases of plate glass, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated March 24, 1885.

ADDISON BROWN,
Judge.

(Endorsed:) Due service admitted March 24, 1885. Elihu Root, U. S. attorney. Filed March 24, 1885.

It is consented that the foregoing be certified as a true copy of the record herein.

ELIHU ROOT,
U. S. Att'y, Deft. in Error.
R. S. NEWCOMB,
By S. C. & S.,
Att'y for Pl'ff in Error.

55 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday the sixth day of May, in the year of our Lord one thousand eight hundred and eighty-five.

Present, the honorable William J. Wallace, circuit judge.

THE UNITED STATES, DEFT. IN ERROR,
vs.
35 CASES OF PLATE GLASS, PLFF. IN ERROR. } In error to U. S. dist. ct. cal., Apr. term, '85.

The above cause coming on for argument upon writ of error—

Mr. Stephen G. Clarke is heard in behalf of plaintiff in error.
Mr. John P. Clarke is heard in behalf of defendant in error.
Decree of court below affirmed.

56 THIRTY-FIVE CASES PLATE GLASS, &
Edward Boyd, et al., plffs. in error,
vs.
THE UNITED STATES.

WALLACE, J.

The main question discussed upon the hearing of this writ of error relates to the constitutionality of § 5 of the act of June 2, 1874. In view of the decisions in U. S. vs. Hughes, 12 Blatch. 553; U. S. vs. Stockwell, 12 Int. Rev. Record, pg. 88, and in re Platt & Boyd, 12 Do. 132, this question should not be deemed an open one in this court, and is therefore decided adversely to the contention of the plaintiffs in error.

There was no error in the ruling of the court below receiving in
57 evidence the order to produce the invoice of the glass in controversy and the return of the claimants thereto, nor in the refusal of the court to instruct the jury as requested by the defendants on the trial. The evidence received was necessary as a foundation to permit secondary evidence of the invoice to be introduced. As to the first instruction which was refused, if the permit of the Secretary of the Treasury was obtained by means of false statements and fraudulent acts, the cause of forfeiture was directly within the language of § 12 of the act of June 22, 1874. As to the two other instructions refused, they had already been given in substance by the court to the jury.

The judgment is affirmed.

58 (Endorsed:) Thirty-five cases plate glass & Boyd & Son, claimants, vs. The United States. Opinion, Wallace. U. S. circuit court. Filed May 6th, 1885. Timothy Griffith, clerk.

59 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on the 26th day of June, in the year of our Lord one thousand eight hundred and eighty-five.

Present, the honorable William J. Wallace, circuit judge.

THIRTY-FIVE CASES OF PLATE GLASS AND EDward A. Boyd et al., claimants, plaintiffs in error.
vs.
THE UNITED STATES, DEFENDANT.

60 This case having come on for argument before the Hon. William J. Wallace, the circuit judge, on the 6th day of May, 1885, on the writ of error sued out the plaintiff in error to review the final decree entered in the district court for this district in favor of the United States and condemning the said goods, wares, and merchandise proceeded against, as forfeited to the United States, and after hearing Stephen G. Clarke, esq., of counsel for plaintiff in error, John Proctor Clarke, assistant United States attorney, not being called on, and the said circuit judge having filed his opinion affirming the final decree below, it is now, on motion of Elihu Root, United States attorney, ordered, sentenced,
61 and decreed, that the final decree herein entered in the district court for the southern district of New York, on the 23d day of March, 1885, be, and the same hereby is, in all things affirmed, with costs to the United States, to be taxed by the clerk.

And it is further ordered, sentenced, and decreed that unless an appeal or writ of error be taken to this decree within the time limited by law and prescribed by the rules and practice of this court, that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, returnable on the third Monday of October next, and that on the return of said writ he distribute the proceeds according to law.

WM. G. WALLACE.

62 (Endorsed:) U. S. circuit court southern district of New York, Thirty-five cases of plate glass and Edward A. Boyd et al, claimants, plaintiff', vs. The United States, defendant. Decree. Elihu Root, United States attorney, attorney for defendant. U. S. circuit court. Filed June 26, 1885. Timothy Griffith, clerk.

63 Know all men by these presents, that Edward A. Boyd and Sons, a firm composed of Edward A. Boyd and George H. Boyd, claimants of thirty-five cases of plate glass, as principals, and Miles J. Connor and Thomas Bouran, sureties, are held and firmly bound unto the United States of America in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said United States of America, for which payment well and truly to be made we bind ourselves, heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals; dated the third day of July, in the year one thousand eight hundred and eighty-five.

Whereas the above-named Edward A. Boyd and George H. Boyd have prosecuted a writ of error in the Supreme Court of the United States, to

reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the southern district of New York:

64 Now, therefore, the condition of this obligation is such that if the above-named Edward A. Boyd and George H. Boyd, claimants of thirty-five cases of plate glass, shall prosecute their said writ of error to effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and virtue.

EDWARD A. BOYD & SONS. [SEAL.]
MILES J. CONNOR. [SEAL.]
T. BOURAN [SEAL.]

Sealed and delivered in the presence of—
JOHN S. DALL.

UNITED STATES OF AMERICA,
District of New York, ss:

George H. Boyd to me known to be a member of the firm of Edward A. Boyd & Sons, Miles J. Conner, and Thomas Bouran, all known to me to be the persons who subscribed the foregoing bond, and being duly sworn, deposes and say, and each for himself saith, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

65

GEO. H. BOYD.
MILES J. CONNOR.
T. BOURAN.

Sworn to before me this 3d day of July, 1885.
[SEAL.] JOHN S. DERNY,
Notary Public, N. Y. County.

STATE OF NEW YORK,
County of New York, ss:

On this 3d day of July, in the year one thousand eight hundred and eighty-five, before me, personally came George H. Boyd, a member of the firm of Edward A. Boyd & Sons, Miles J. Connor, and Thomos Bournan, all to me known, and known to me to be the individuals described in and who executed the foregoing instrument, and they thereupon severally duly acknowledged to me that they had executed the same.
[SEAL.] JOHN S. DERNY,
Notary Public, N. Y. County.

(Endorsed:) Bond. Within bond approved July 4, '85. Addison Brown. U. S. circuit court Filed Jul. 6, 1885. Timothy Griffith, clerk.

66 UNITED STATES OF AMERICA, *ss:*

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and eighty-five, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Thirty-five cases of plate

glass and Edward A. Boyd et al., claimants, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated July 3d, 1885.

ADDISON BROWN.

67 (Indorsed:) U. S. Supreme Court. Thirty-five cases of plate glass and Edward A. Boyd et al., claimants, plaintiffs in error, against the United States, defendant in error. Citation. Due service of a copy of the within citation is hereby admitted. Elihu Root, U. S. att'y. July 6th, 1885. U. S. circuit court. Filed July 6, 1885. Timothy Griffith, clerk.

68 United States Supreme Court.

THIRTY FIVE CASES OF POLISHED PLATE GLASS, Edward A. Boyd, et al., claimants, plaintiffs in error,
against
THE UNITED STATES, DEFENDANT IN ERROR.

And now on the second Monday of October, 1885, before the justices of said court, came Edward A. Boyd and George H. Boyd, claimants, by Richard S. Newcomb, their attorney, and say that, by the record aforesaid, there is error in the various rulings hereinbefore excepted to; also in this, that judgment was rendered for the defendant in error and not for the plaintiffs in error by the district court; also in this, that the circuit court erred in affirming said judgment of the district court for the defendant in error, and in not reversing said judgment by reason of the errors in said record of the district court appearing. Wherefore plaintiffs in error pray that the judgments aforesaid, for the errors aforesaid and other errors in the record and proceedings aforesaid, as the same more fully appear therein, may be reversed and annulled.

RICHARD S. NEWCOMB,
By STANLEY, CLARKE & SMITH,
Att'ys for Plaintiffs in Error.

(Endored:) U. S. circuit court. Filed Sept. 26, 1885. Timothy Griffith, clerk.

69 Supreme Court of the United States.

E. A. B., 1–35, THIRTY-FIVE CASES OF PLATE Glass, Edward A. Boyd, and George H. Boyd, claimants, plaintiffs,
against
THE UNITED STATES OF AMERICA, DEFENDANT. } In error.

Joinder in error.

And afterwards, to wit, on the second Monday in October, 1885, the United States of America, the defendant in error, by William Dorsheimer,

its attorney, comes into court and says that there is no error either in the record or proceedings aforesaid, or in the judgment aforesaid, and he prays that this court may proceed to examine the record and proceedings aforesaid as to the matter assigned for error, and that the judgment herein be in all things affirmed.

WILLIAM DORSHEIMER,
U. S. District Attorney, Attorney for Defendant in Error.

70 (Indorsed:) U. S. Supreme Court. E. A. B., 1–35, Thirty-five Cases of Plate Glass, Edward A. Boyd, and George H. Boyd, cl'ts, versus The United States of America. Joinder in error. William Dorsheimer, United States attorney, attorney for defendant. Due service of a copy of the within is hereby admitted. New York, , 188 .

(Original endorsed:) U. S. circuit court. Filed Sept. 26, 1885. Timothy Griffith, clerk.

(Indorsement on cover:) No. 983. Edward A. Boyd and George H. Boyd, claimants of thirty-five cases of plate glass, plaintiffs in error, vs. The United States. S. New York C. C. U. S. Filed September 29, 1885.

116-616

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

EDWARD A. BOYD ET AL.
v.
THE UNITED STATES. } No. 983.

And now comes A. H. Garland, Attorney-General of the United States, and presents a copy of a letter from J. H. Robinson, Acting Solicitor of the Treasury, by which it appears that the above-entitled cause is one of interest to the United States, involving questions affecting the revenue materially, and it appears important that said cause should be heard at an early date.

Therefore he moves the court to advance said cause upon the docket according to the provisions of paragraph 5, rule 26.

A. H. GARLAND,
Attorney-General, United States.

DEPARTMENT OF JUSTICE,
OFFICE OF SOLICITOR OF THE TREASURY,
Washington, D. C., Oct. 17th, 1885.

SIR: The suit of the United States against 35 cases of plate-glass ◇E. A. B.◇ 1–35, Edward A. and George H. Boyd, claimants, commenced in the southern district of New York, is now pending in the

Supreme Court on writ of error sued out by claimants.

I am advised that the property consists of plate-glass of the largest size, of the value of about $25,220.84, and that it is still in custody. The cases of plate-glass are of such unusual size that it became necessary to place them in private warehouse at great expense for storage. As ordinarily it will take not less than three years to reach the case on the calendar of the Supreme Court, it is apparent that a heavy bill of charges will be incurred. I am informed by the U. S. attorney that the only question raised by the writ of error is the constitutionality of section 5 of the act of June 22, 1874, Stats. 18, p. 187, and that this question is important to the effective administration of the customs laws.

With a view to relieve the property of the expense of storage as far as may be and to a speedy determination of the question at issue which the public interests demand, I respectfully submit the request that an effort be made to advance the case on the calendar of the Supreme Court.

Very respectfully,

J. H. ROBINSON,
Acting Solicitor.

The Hon. ATTORNEY-GENERAL.

Office Supreme Court U. S.
FILED.
DEC 2 1885
JAMES H. MCKENNEY.
CLERK.

BURGOYNE'S "Quick" Print, 44 1/2 Centre St., N. Y.

116-616

Supreme Court of the United States,

OCTOBER TERM, 1885.

No. 983.

EDWARD A. BOYD ET AL.,
Claimants, etc.,

AGAINST

THE UNITED STATES.

Brief for Plaintiffs.

STATEMENT.

November 14, 1882, the Supervising Architect advertised for bids for the glass required for the Federal Buildings then in the process of erection at Philadelphia, to be submitted by the second of the following month, the bidders for foreign plate glass to "state what reduction will be made in their bids if the plate glass shall be admitted free of duty." (Record, 8; fols. 16 and 17.)

The claimants made their bid in the prescribed form, and were awarded the contract, upon the basis of a free entry of the glass to be supplied by them. (*Id.*, 12, lower half.)

Under the stimulus of the special provisos attached to the items relating to this structure in the "Sundry Civil" Appropriation Acts of March 3, 1881, and 1883, (21 Stats., 435, and 22 Stats., 604, top), the latter of

which peremptorily required this officer to have the Court Rooms ready by July 1, 1883, and the Post Office by October 1, 1883, and to expedite the work, the supervising architect directed the claimants to supply the needed glass out of the stock on hand (which had paid duty) and to receive an equivalent quantity duty free by subsequent importations. Accordingly, they sent to Philadelphia eighty-one cases of plate glass, the cases containing from one hundred to two hundred and fifty square feet each;—the total amount furnished and used in the building being at least 9,454 square feet; and a larger quantity was cut by order of the supervising architect for use there. (Record, 13, top; 22, fol. 45, and 23, middle.)

The contractors assert that, to furnish in haste the required quantity, in the unusual sizes and shapes demanded by the plan and the architect, they had to cut up and destroy of their stock a vastly larger number of square feet; and that the breakage of glass imported to replace it was enormous. (Record, 23, middle; 24, middle.)

In April, 1884, the claimants imported, per "Baltic," twenty-nine cases of glass, invoiced to contain 25,942 square feet, (Record, 22, fol. 45) of which they say (*ubi sup.*) two-thirds was broken in transit. For this glass, a free permit issued, and it was not seized, and is not in controversy here. June 4, 1884, they made another importation, per "Alaska," of the glass now proceeded against, consisting of thirty-five cases, originally containing 26,978 square feet. (Rec., 13, fol. 29.) For this glass, also, a free permit issued, but was revoked before the cases left the custody of the collector, and the goods were immediately seized; so the claimants could not show the percentage of breakage in this importation. Upon the tenth day of July, 1884, the pending information was filed (Record, 5, 6) seeking the forfeiture of these goods upon the ground that an entry thereof was made or attempted by means of a

false or fraudulent invoice, etc., as will presently be more fully noticed. The information proceeds entirely upon the twelfth section of the Act of June 22, 1874, c. 391; which reads ;—

"SEC. 12. That any owner, importer, consignee, agent or other person who shall, with intent to defraud the revenue, make, or attempt to make, any entry of imported merchandise, by means of any fraudulent or false invoice, affidavit, letter, or paper, or by means of any false statement, written or verbal, or who shall be guilty of any wilful act or omission by means whereof the Unites States shall be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, affidavit, letter, paper, or statement, or affected by such act or omission, shall, for each offence, be fined in any sum not exceeding five thousand dollars nor less than fifty dollars, or be imprisoned for any time not exceeding two years, or both; and, in addition to such fine, such merchandise shall be forfeited; which forfeiture shall only apply to the whole of the merchandise in the case or package containing the particular article or articles of merchandise to which such fraud or alleged fraud relates; and anything contained in any act which provides for the forfeiture or confiscation of an entire invoice in consequence of any item or items contained in the same being undervalued, be, and the same is hereby, repealed."

(18 Stats., 188.)

The last clause of the bill of exceptions (Rec. 22, fol. 45) distinctly states that, by themselves or by attorney, the claimants made no representation, written or verbal, concerning this glass, to any officer of the Government, other than such as may be found in the exhibits produced at the trial and found in this record at pages 15 to 17, folios 33 to 36.

Reference to these exhibits shows that claimants wrote their own attorney (Gannon) who—upon their letter-sheet, and in their firm-name—repeated the statement to Supervising Architect Bell, that the

steamer "Alaska" was bringing thirty-five cases of glass, "imported to replace that furnished from stock" for the public building at Philadelphia; which, with the twenty-nine cases before admitted, made "64 of the 81 cases furnished to said building, leaving a balance of 17 cases yet to be imported;" and requested "that the necessary instructions may be sent without delay to the Collector of the Port of New York to admit the above 35 cases free of duty in the usual manner." (Record, 16.)

Thereupon the Supervising Architect communicated to the Secretary of the Treasury the expectation of the arrival of this glass "to replace glass furnished from stock for the building named, being a second shipment on this account," and concluding thus;—

"Upon my request of April 3d last, the first shipment was admitted free of duty, and I have the honor to request that instructions be given to the Collector of the Port of New York to also admit this second shipment free of duty.

With letter of April 3d was enclosed a copy of schedule and specifications of contract, showing quality and *quantity of glass* to be supplied, *that a proper indentification of the shipment might be had.*" (Record, 16, 17.)

In compliance with the above request of Supr. Arch. Bell, the Secretary of the Treasury addressed to the Collector at New York a letter of this tenor (omitting date, address and signature);—

"SIR; *By request of the Supervising Architect* of the Treasury Department, dated this day, you are hereby authorized to admit to entry, free of duty and charges, thirty-five (35) cases plate glass, marked E. A. B., numbered from 1 to 35, inclusive, said goods having been imported at your port in the Alaska *for the use of the court-house and post-office building* at Philadelphia." (Record, 17).

"The Collector acted on said order of the Secretary,

and the claimants made a free entry of the thirty-five cases by the Alaska; but before they received them from the Collector the goods were seized, and *subsequently* the free permit was revoked." (*Ib.*)

This was *the whole transaction* as to the seized goods.

The district-attorney had put into the case a correspondence of a similar character (found at pages 13 to 15 of the record) relative to the importation of the twenty-nine cases, *per* Baltic. He also offered in evidence, and it was received subject to our exceptions, the order of the district-judge, purporting to issue under authority of the fifth section of the aforesaid Act of June 22, 1874, for the claimants to produce "before this Court," for the use and benefit of their adversaries, the invoice of the Union Plate Glass Co., or its agents, of these twenty-nine cases *per* Baltic. The claimants' returns to this order, and the duplicate invoice by them produced in obedience thereto, were also offered in evidence by the libellants, objected to by the claimants, received by the Court, and the claimants excepted. (Record, 17 to 21.)

Besides objecting to the order, returns, and invoice as immaterial, etc., (*Ib.*), it was—and is—contended that the statute upon which the proceedings compelling the production of the invoice were had was unconstitutional; especially in that it required the persons charged with fraud in relation to the seized property to furnish evidence against themselves. (*Ib.*)

The section in question declared;—

"Sec. 5. That in all suits and proceedings other than criminal arising under any of the revenue laws of the United States, the attorney representing the Government, whenever, in his belief, any business book, invoice, or paper, belonging to or under the control of the defendant or claimant, will tend to prove any allegation made by the United States, may make a written motion, particularly describing such book,

invoice, or paper, and setting forth the allegation which he expects to prove; and thereupon the Court in which suit or proceeding is pending may, at its discretion, issue a notice to the defendant or claimant to produce such book, invoice, or paper, in Court, at a day and hour to be specified in said notice, which, together with a copy of said motion, shall be served formally on the defendants or claimant, by the United States Marshal, by delivering to him a certified copy thereof, or otherwise serving the same as original notices of suit in the same Court are served; and if the defendant or claimant shall fail or refuse to produce such book, invoice, or paper in obedience to such notice, the allegations stated in the said motion shall be taken as confessed unless his failure or refusal to produce the same shall be explained to the satisfaction of the Court. And if produced, the said attorney shall be permitted, under the direction of the Court, to make examination (at which examination the defendant or claimant, or his agent, may be present) of such entries in said book, invoice, or paper as relate to or tend to prove the allegation aforesaid, and may offer the same in evidence on behalf of the United States. But the owner of said books and papers, his agent or attorney, shall have, subject to the order of the Court, the custody of them, except pending their examination in Court as aforesaid." (18 Stats., 187.)

Assignment of Errors.

The plaintiffs in error assign for error;—

First. The affirmance by the Circuit Court of the judgment and decree of forfeiture of the District Court. (Record, 28, 29.)

Second. The judgment and decree of forfeiture of the District Court. (Record, 26; fols. 51 and 52.)

Third. That judgment was rendered for the defendant in error and not for the plaintiffs in error; (Record, 26.) the libel not sufficiently stating any offense.

Fourth. The admission in evidence of the Order of the District Judge for the production by claimants of

the Union Plate Glass Co.'s invoice of the twenty-nine cases imported *per* Baltic. (Record, 17, 18.)

Fifth. The admission in evidence of the two returns made by the claimants to said Order. (Record, 19, 20.)

Sixth. The admission in evidence of the aforesaid invoice (or the duplicate thereof) produced in compliance with, and under the compulsion of, said Order. (Record, 21, lower half.)

Seventh. The refusal of the Court to give this requested instruction; —

"That the claimants having requested the Supervising Architect to obtain for the goods a free permit, and he having requested the Secretary of the Treasury to issue such permit, and having transmitted to him with that request the necessary data from which the Secretary might have determined whether such permit ought to be granted, the goods in question are not liable to forfeiture, even though the jury find such permit to have been improvidently granted" (Rec., 25, fol. 50).

Eighth. The refusal to give this instruction:

"The entry in question having been made upon the bill of lading and letter of the Acting Secretary of the Treasury, to entitle plaintiff to recover the jury must find, upon a fair preponderance of the testimony, a false statement *in those documents* and that such false statement was procured by the act or acts of the claimants or their agents." (*Ibid.*)

Ninth. The refusal to instruct:

"That the mere fact that defendants claimed to be entitled to enter goods free of duty, unaccompanied by any false statements as to the character, quality and quantity of the goods, is not sufficient to entitle the Government to recover." (*Ibid.*)

BRIEF.

I.

Apropos of the first three assignments of error :—

The section upon which this libel is based does not authorize any proceedings against the goods, except as they are incidentally affected by the result of the prosecution of the offender.

In other words, it makes the forfeiture—like the fine and imprisonment—part of the punishment upon conviction. It is "*in addition to* such fine" as may be imposed—and not independently of it—that "such merchandise shall be forfeited." (See *ante*, p. .)

This section makes the *person*, and not the thing, the offender.

It is "for each OFFENCE" that the offender "shall be fined" or imprisoned, and "in addition to *such* fine, such merchandise shall be forfeited." (*Ib.*)

Until the '*offence*' is proved, there can be *neither* fine, imprisonment, nor forfeiture.

The only procedure authorized, then, is a *criminal* one, in form as well as in substance. At least, an indictment must be prosecuted to a conviction before a forfeiture can be decreed; even if (which we do not at all believe) a subsequent, separate proceeding of forfeiture, upon the ground of a conviction and *fine*, could be had. The whole context sustains our view. It is *only* "in addition to such *fine*" as may be imposed that a forfeiture can be had. If the Court elect to punish by *imprisonment*, there can be no forfeiture added to *that* punishment: and, until a conviction is had, there can be no election by the Court of the punishment to be inflicted.

It is to be a *judicial* election whether to imprison or to impose fine and forfeiture; and no prosecuting offi-

cer has any right to determine upon the confiscation of the property to the exemption of the offender's body.

U. S. vs. Reindeer, 2 Cliff., 68, citing
U. S. vs. Grundy, 3 Cranch., 338, *351.*

At the next page (352) of the opinion, MARSHALL, C. J., says ;—

" If the *penalty* of an offence be not the *positive* forfeiture of a particular thing, but *one of two things*, it would seem to be altering, materially, the situation in which that person is placed, to say that either is vested in him before he makes that choice. * * * It seems, then, to be the necessary construction of the Act of Congress, that the U. S. acquired no property in the vessel until they elected to pursue *that part of the alternative* given by the statute. (3 Cr., 352–354.)

The government can only act through its official agents. Its act of election can only be performed by the functionary empowered to elect—under *this* statute, the judge who presides at the trial of the offender. It is *his* province to decide whether, in view of the facts established by the evidence and verdict, the interests of the government will be best subserved by a pecuniary mulct and forfeiture, or by the incarceration of the culprit.

Not only the argument of the foregoing cases, but of those below-cited establish this.

U. S. vs. Coffee, 8 Cranch, 398.
The Mars, *Id.*, 417.
Fontaine vs. Ins. Co., 11 Johns., 300.
Caldwell vs. U. S., 8 How., 382.

In one of the above-cited cases, arising under section 16 of the non-intercourse and embargo act of March 1, 1809, (2 Stats., 532) this Court was very nearly evenly divided *in numbers*, the opinion of STORY, J., below (reproduced as a dissenting opinion) being reversed by JOHNSON, LIVINGSTON, TODD and DUVAL, JJ., while MARSHALL, C. J., and WASHINGTON, J., agreed with

Judge STORY. (See 7 Gall., 2d ed., 191, note.) But both opinions accepted this proposition as fundamental, that the legislature could fix the *time*, as well as the *conditions* of forfeiture; and that it is *only* when the forfeiture is "*absolute*," that immediate title vests in the United States. (8 Cranch, 398.)

Henderson's Spirits, 14 Wall., 57.

Speaking for the majority, in his short opinion, JOHNSON, J., says;—

"We are of opinion that the question *rests altogether on the wording of the act* of Congress; by which it is *expressly* declared that the forfeiture shall take place upon the commission of the offence." Hence, the Court decide accordingly, admitting at the same time that "it is true that cases of hardship and *even absurdity* may be supposed to grow out of this decision."

U. S. vs. Coffee, 8 Cranch, 404–5.

On the other hand, STORY, J., having the countenance of "two of his brethren," held a contrary view of the legislative intent, though recognizing that "if the decision be against the U. S., it may open a wide field for fraud and colorable transactions, to the encouragement of offenders." (*Id.*, 406.)

He quotes a paragraph from the C. J.'s opinion, in Cranch, 350;

"Where a forfeiture is given by a statute, the rules of the common law may be dispensed with, and the thing forfeited may either vest immediately, or *on the performance of some particular act*, as shall be the will of the Legislature. *This must depend upon the construction of the statute.*" (3 Cr., 350.)

STORY, J., then adds;—

"I entirely subscribe to the doctrine stated by the Chief Justice. There can be no doubt the Legislature may provide that its forfeitures shall take effect differently from the course prescribed by the common law. But the question will always be: Have the Legislature so done?" (8 Cranch, 406–7.)

The course prescribed by the common law, was forfeiture only after conviction.

"In all cases at common law where lands are forfeited for the personal offence of the party, I take the rule to be *universally* true that, *until the offence is ascertained* BY CONVICTION and attainder, no title vests in the sovereign. * * * * * *The same doctrine is also*, in general, *true as to like forfeitures of goods and chattels.*" (Citing numerous authorities.) He comes to the conclusion that revenue seizures cannot be distinguished in principle, so far as an actual taking by the government is concerned.

U. S. v. Coffee, 1 Gall., 193–8, and 8 Cranch, 406 to 411.

The opinion in 14 Wall., 56 and 57, shows that it is *only* where the forfeiture is expressly declared to be "absolute," and without alternative, that the commission of the prohibition act, *ipso facto*, vests title in the U. S. If there be an alternative, or statutory condition precedent, of course it must be performed.

Henderson's Spirits, 14 Wall., 56, 57.

II.

The first three assignments of error (*ante*,) also bring up—the third expressly states and raises—the question of the legal sufficiency of the information to sustain a judgment of condemnation, even if there can be a forfeiture without conviction of the offender.

"The first question made for the consideration of the Court is this;—Will this information support a judgment of condemnation? * * * It is not controverted that in all proceedings in Courts of common law, either against the person or the thing for penalties or forfeitures, the allegation that the act charged was com-

mitted in violation of law, of a particular statute, will not justify condemnation *unless*, independent of this allegation, *a case be stated which shows that the law has been violated.* The reference to the statute may direct the attention of the Court, and of the accused, to the particular statute by which the prosecution is to be sustained, but forms no part of the description of the offence. The importance of this principle to a fair administration of justice, to that certainty introduced and demanded by the free genius of our institutions in all prosecutions for offences against the laws, is too apparent to require elucidation, and the principle itself is too familiar not to suggest itself to every member of the profession.

Does this rule apply to informations in a court of admiralty?

It is not contended that all those technical niceties which are unimportant in themselves, and standing only on precedents of which the reason cannot be discerned, should be transplanted from the courts of common law to the courts of admiralty. *But a rule so essential to justice and fair proceeding as that which requires a substantial statement of the offence* upon which the prosecution is founded *must be the rule of every court* where justice is the object, and cannot be satisfied by a general reference to the provisions of a statute." MARSHALL, C. J., in

Sch. Hoppet v. U. S., 7 Cranch, 393–4.

He adds;—" The rule that a man shall not be charged with one crime and convicted of another may sometimes cover real guilt, but its observance is essential to the preservation of innocence. It is only a modification of this rule that the accusation on which the prosecution is founded should state the crime which is to be proved, and state such a crime as will justify the judgment to be pronounced." (*Ibid.*)

He assigns as the first reason for this rule, " that the party accused may know against what charge to direct his defense." (*Ib.*)

U. S. vs. 90 Demijohns, 26 Int. R. R., 61 and 69.

The conclusion reached was that the information

was not sufficient to base upon it a decree of the forfeiture of the vessel. (7 Cranch, 394.)

In another cause, at the same term, "The Court directed the following decree to be entered:—

"This cause came on to be heard on the transcript of the record, and was argued by counsel, on consideration whereof, it is the opinion of the Court that *the libel is too imperfectly drawn to found a sentence* of condemnation thereon. The sentence of the Circuit Court is therefore reversed, and the cause remanded to the said Circuit Court, with directions to admit the libel to be amended."

The same point was also decided at this Term in the cases of the schooner "Hoppet," the schooner "Enterprise," the ship "Emily" and the schooner "Ann."

Brig "Caroline," 7 Cranch, 500.
The "Anne," *Id.*, 570.
The "Edward," 1 Wheaton, 269.
The "Mabey," 10 Wall., 420, Mid.

In U. S. vs. Weed, 5 Wall., 68, the foregoing cases, and the language of MARSHALL, C. J., in that first cited, are quoted, prefaced by the remarks:

"It would seem to violate all rules of pleading, as well as all the rules of evidence applicable to penal forfeitures, to hold that in such circumstances we can proceed to condemnation. The right of the claimant to be informed by the libel of *the specific act* by which he or his property has violated the law," &c., * * * "are as fully recognized in the Admiralty Courts (in all, except prize cases) as in the courts of common law." 5 Wall., 68.

Admiralty Rule XXII. is in conformity with these decisions;—

"All informations and libels * * * shall also propound *in distinct articles the matters relied on as grounds or causes of forfeiture*, and aver the same to be contrary to the form of the statute," etc.

Although process against an inanimate thing is not strictly criminal process, yet its character and effect

are such that the strictness of construction of the criminal law is applied to informations for forfeitures, etc.

"Informations of the kind should propound *in distinct articles* the causes of forfeiture, and should aver that the same are contrary to the form of the Statute," &c.; and the rule is that, inasmuch as *the information is in the nature of a criminal proceeding*, the allegations must conform strictly to the statute upon which it is founded."

U. S. v. Huckabee, 16 Wall., 431.
U. S. v. Hughes, 8 Ben., 31.
Clifton v. U. S., 4 How., 250.

"Part *crime* and part *interest*." King vs. Berchett, 1 Shower, 107 top.

Hence, after verdict, judgment has been arrested for want of sufficiently specific allegations in the information.

Per WARE, J; "The other causes assigned for the arrest of judgment, and which have been insisted upon in the argument, may all be resolved into one, and that is, that the offence is not set out in the information with that clearness and distinctness which is required by the rules of pleading and the practice of the Courts. It was long ago held by the Supreme Court that an information to recover a *penalty*, under the collection act of 1799, is in the nature of a criminal proceeding.

"The description of the offence for which the penalty is demanded must have the same kind and degree of certainty that is ordinarily required in other criminal proceedings."

U. S. v. 3 Parcels Embroidery, 9 Mo. Law Rep. (U. S.), 143.
U. S. v. 78 Cases, 2 Bond, 273.

He thus concludes the opinion; "Under this section of the statute, it appears to me that this design in making the invoice is an essential part of the offence. If it is so, the rules of pleading require that it be *distinctly* alleged. If it be said that the jury, under the

direction of the Court, found the fact, it is still true that by the strict rules of pleading in penal causes, the plaintiff can recover only according to the allegation as well as his proofs." Judgment arrested. (June 11, 1856.)

(*Id.*, 145.)

We are well aware that, in answer to an objection that the libel was "too loose, inartificial and general in its structure to give a just foundation for any judgment of condemnation," this Court replied that, in informations for seizures, general allegations, bringing the case within the words of the statutes, have often been held sufficient; and that a decree may be sustained "if the words of the statute are pursued, AND *the allegations point out the facts so as to give reasonable notice to the party to enable him to shape his defense.* * * * There may be *exceptions to this rule*, where the *terms of the statute are so general as naturally to call for more distinct specifications.*"

The Palmyra, 12 Wheaton, 12, 13.
The Mary Ann, 8 *Id.*, 389.

In an opinion of this Court, rendered eight years ago, after quoting the language of MARSHALL, C. J., in the last cited case, it is observed;

"Examples of the kind where it has been held that it is *not* sufficient to follow the words of the statute are quite numerous, and they show that many of *the exceptions are as extensively recognized and as firmly settled as any other rule of pleading* in such cases. Views of a corresponding character are expressed by this Court in another case, where the opinion was delivered by Mr. Justice STORY. Having stated the rule, that it is in general sufficient to allege the offense in the very terms of the statute, he proceeds to remark: 'We say, in general, for *there are doubtless cases where more particularity is required*, either from the obvious intention of the Legislature or from the known principles of law, both of which exceptional requirements are applicable in this case."

U. S. v. Mann, 95 U. S., 586.
U. S. v. 78 Cases, 2 Bond, 273.

"In an indictment for a misdemeanor, created by a statute, as a *general rule*, it is sufficient to allege the act in the words of the statute. But this rule is subject to *many* exceptions, and by no means dispenses with the necessity of alleging those facts and circumstances which must necessarily exist in order to bring the act within the purview of the statute; for it will hardly be pretended that an act is within a statute unless it be within its obvious scope and its true intent and meaning."

Peo. vs. Wilber, 4 Park. Cr. Cas., 21.

We respectfully submit that it is hardly possible to conceive of any case more imperatively demanding the application of the above-mentioned *exception* to the general rule than does the one at bar; most manifestly (though not with more legal propriety) to the second count. (Rec., 6.)

Undertaking to follow the statute, and giving no more definite information than that, it alleges that *somebody—either* "the owners, importers, consignees, *or* agents of the said merchandise OR *some other person* or persons now unknown to the collector and attorney,"—made or attempted to make an entry of such merchandise; and that "the said owners, importers, consignees, or agents, and *other person* or persons unknown, was and were guilty of certain acts and omissions;"—no act or omission of any kind being any more specifically indicated (Rec., 6, folio 11).

The statute, it is true, uses general phraseology; providing that

"Any owner, &c., or other person who shall, with intent to defraud the revenue, make or attempt to make any entry," &c., by means of any fraudulent or false invoice, &c., "or by means of any false statement, written or verbal; *or* who shall be guilty of any WILFUL act or omission by means whereof the United States shall be deprived of the lawful duties," or any part thereof, accruing upon any of the merchandise, shall be fined, etc.; "and, in addition to such fine, such merchandise shall be forfeited." (18 Stats., 188, and *ante*, p. , which see.)

The statute requires the act or omission to be *wilful*; the information does not allege any *wilful* act or omission upon the part of anybody, known or unknown, connected with this merchandise or not. It merely says that *somebody* either did or omitted to do some unspecified act; *somebody was guilty of something*, either of an omission *or* a commission.

To state that one had responded in the language of the litany would be as definite a ground for forfeiture of property as is here stated.

To call *this* an "*information*" is a misnomer.

It informs nobody that any one has done or omitted any specific thing.

U. S. vs. 78 Cases, 2 Bond, 273.

This section (Act of June 22, 1874, c. 391, § 12; *ante*, p.) indicates two offences as grounds of forfeiture, affecting each with the same penalty:—(1st) the attempt, successful or futile, to effect an entry by means of fraudulent or false documents or statements; and (2d) a *wilful* act or omission whereby the United States is deprived of duties.

The second count of the libel starts out with the statement that somebody, who either did or did not have some relation to these goods, made or attempted an entry thereof; and that either the owners, &c., *or* some unknown party, were *guilty* of acts and omissions. (Rec., 6.) It is not, in this count, pretended that the entry was sought to be made by means of any false document or statement, verbal or written; nor that the unspecified acts and omissions had any relation to the entry. *Non constat*, but that the owner, &c., or some unknown person made or attempted the entry, and a totally disconnected incognito acted or omitted something with relation to the goods.

Caroline, 1 Brock., 384; 7 Cranch, 496.
Three Parcels, &c., 9 Mo. L. Rep., (N. S.), 143.

Notwithstanding the generality of the statutory phraseology, it can hardly be supposed that Congress intended goods should be forfeited by the act of a person who rightfully had nothing to do with them; an act committed (or omitted) without the knowledge or against the will of the owner or his agent. Peo. v. Wilber, 4 Park. Cr. Cas., 21. Could an omission by a customs-officer, without fault on the part of the owner or his representative, divest the owner's title? Almost always, such broad language has to be restricted in its practical application; as the law punishing any one who shed blood in the streets of Bologna was held inapplicable to a surgeon who bled one who fell upon the sidewalk in a fit. The "other person" must be some one who owes a duty with regard to the goods analogous to that of the owner, etc., therein being *ejusdem generis* with the owner, importer, consignee and agent.

The Waterloo, 1 Bla. & How., 114.
Peo. v. Wilber, 4 Park. Cr. Cas., 21.
Reiche v. Smythe, 13 Wall., 162.

So, a statute forfeiting all goods landed without permit, and not bearing the customs marks, etc., does not apply to the cargo of a wrecked vessel; because, "a forfeiture can only be applied to those cases in which the means prescribed to prevent forfeiture can be employed."

U.S. v. ship Favorite, 4 Cranch, 347, 363–4.
The Gertrude, 2 Ware, 184–187.

Hence, even if the *name* of the actor is "unknown," his person and relation to the goods should be somehow identified; certainly, the act or omission of which somebody is said to be "guilty," whereby the forfeiture accrues, should be specified. The prosecutor cannot swear to the commission of a violation of law unless he knows the act or omission constituting the offence; and knowing he should state it.

The Waterloo, 1 Bla. & How., 114.

"Statutes are often framed to meet the relations of parties to each other, and to prevent frauds by the one upon the other; and, in framing them, the language is often elliptical, leaving some of the circumstances *expressive of the relation of the parties* to each other to be supplied by intendment or construction. In all such cases, *the facts* and circumstances *constituting such relation* of the parties to each other *must be alleged* in the indictment, though not expressed in the words of the statute."

Peo. v. Wilber, 4 Park. Cr. Cas., 21.
State v. Martin, 3 Murph. (No. Car.), 533.

"Sec. 44 of the Int. Rev. Act of July 20, 1868, c. 186 (15 Stats., 142–3) enacts that any person who shall carry on the business of a distiller with intent to defraud the U. S., of the tax on the spirits distilled by him, or any part thereof, shall be fined, and all distilled spirits, etc., etc., shall be forfeited." * * *

Judge CADWALADER held that a specification of what had been done, in execution of the intent, could not be dispensed with.

U. S. v. Whiskey, 11 Int. Rev. Rec., 109.

Property could not be forfeited under an allegation that some anonymous person had embarked in the distilling business with the intent to defraud.

In a case where the particulars of the offense were stated, but not proved as alleged, the Court held that the descriptive statements could not be rejected as surplusage, and believed that

"The indictment would have been bad if the allegation of the illegality of the importation had been simply that it was contrary to law, without showing *the facts constituting such illegality*, or stating *the particular illegality* intended to be proved."

U. S. v. Thomas, 4 Ben., 375, bottom.

So, upon an indictment against a mail-carrier for stealing $5 out of a letter intrusted to him and "intended to be conveyed by post" from G to I, Judge Curtis held it essential not merely to allege that the

letter was "intended to be conveyed by post," but that "it is legally essential to the charge to allege some intent to have the letter conveyed *somewhere* by post;" and that this terminus should be truly stated.

U. S. vs. Foye, 1 Curtis, 368, bottom.

The first count (Rec., 5) although not so manifestly charging no act or person, is practically equally vague and meaningless.

It alleges an importation of dutiable goods "on or about *July* 3, 1884; that, "thereafterwards, on or about *June* 4, 1884," the owners or agents, "*or* some other person or persons"—not alleged to have any relation to the goods—with intent to defraud the revenue, made or attempted an entry of the goods specified "by means of a false or fraudulent invoice, affidavit, letter and paper, and by meane of false statements, written and verbal," etc.

(Record, 5, lower half.)

There is no identification of the person doing, nor of the thing done.

There is nothing upon which to base conjecture whether the cause of forfeiture was an invoice, an affidavit, a letter, a paper, or written statements, or the mere words of somebody having no authority to speak, or over or concerning the goods.

It gives, actually, no more information than the following count, and is equally insufficient to found a decree upon; because it does not state *facts* establishing a cause of forfeiture. See cases cited *supra*.

III.

In this connection, we will consider the eighth as-

signment of error, viz., the Judge's refusal to charge that:

"The entry in question having been made upon the bill of lading and the letter of the Acting Secretary of the Treasury, to entitle plaintiff to recover the jury must find upon the fair preponderance of the testimony, a false statement in those documents, and that such false statement was procured by the claimants or their agents."

And the seventh and ninth assignments. See *ante*, p .

We repeat this paragraph of the bill of exceptions, because we wish the fact it states to be impressed upon the Court, viz.;

"*No evidence was introduced tending to show that any other statements or representations were made by the claimants or in their behalf in respect to obtaining the free permit of the thirty-five cases by the "Alaska" than those contained in the exhibits heretofore set forth.*" (Rec. 22, fol. 45.)

This Act of 1874, c. 391, § 12,—certainly, this libel of information, in *both* its counts, emphatically in its *first* count—proceeds upon the idea of *an entry* procured by a fraud such as the statute denounces, viz., by a fraudulent or false statement pertaining to such entry. Accordingly, it first specifies that paper (invoice) which is the usual basis of an entry.

The first count (Rec. 5, lower half) alleges that *somebody*

"with intent to defraud the revenue, made or attempted to make *his entry* of said merchandise * * * *by means* of a false or fraudulent invoice, &c., * * * *and by means* of false statements," etc. (*Ib.*).

The second count also charges that some unidentified individual, making or attempting an entry, was guilty (not wilfully however) of some unnamed act or omission. (Record, 6, upper half.)

The gist of the charge is *making an entry* upon false documents and statements, oral or written.

This charge is not sustained by the proof.

The *only* papers or statements upon which this entry was made were the bill of lading and the Secretary's letter of May 31, 1884, to the Collector at New York, authorizing the admission of the goods free of duty. (Record, 15, fol. 33 ; 17, fol. 36.)

It is further in evidence that the Collector *acted on said order* of the Secretary," contained in that letter, in admitting the goods to free entry. (Record, 17, middle.)

This letter then was the *only* "means" by which the entry of these goods was made.

Was *this letter* of the Secretary a fraudulent or false paper?

Neither. It was not a *false*, but a genuine letter of the Secretary.

The *letter* was not itself fraudulent, however obtained ; since it accomplished the purpose intended by the writer, which (as to him) was legitimate.

IV.

The Court erred in admitting the order made under Sec. 5 of this act of June 22, 1874, c. 391 (see *ante*, p.), the returns to the order, and the document procured from the claimants under the compulsion of that order. (Record, 17 to 22 ; fols. 36 to 45.)

This section is unconstitutional and void.

In determining this, we are not to confine ourselves *simply* to the consideration of what was done under it in this particular instance, but are to contemplate what it authorizes to be done in any revenue case (not

prosecuted against the person for crime) in the discretion of the district judge; *i. e.*, if the theory of the Government, that it is applicable in suits for forfeiture, is correct.

But the preliminary question arises, whether Congress intended to authorize such proceedings in a litigation the object of which is confiscation of property, and success in which is *only* attainable by proving the commission of an offence subjecting the offender to imprisonment, as well as to fine and forfeiture.

If, as hereinbefore argued, this statute contemplates a criminal prosecution of the offender, before determining whether a forfeiture shall be claimed, that ends this case.

But it is *quasi* criminal, anyhow.

See U. S. v. Hughes, 8 Ben., 29, 31; 3 Parcels, 9 Mo. L. Rep. (N. S.), 143; Clifton v. U. S., 4 How., 250; U. S. v. Huckabee, 16 Wall., 431, and other cases cited *infra*, *supra*, and *passim*. R. S., Sec. 860.

The purpose was to compel Mr. Boyd to produce papers to establish his own criminal intent: to adduce for the benefit of the prosecution, evidence tending to convict him whenever the Government (having *thus* obtained the means) should see fit to indict him for the very acts alleged here as a ground of forfeiture.

It is also, in effect, a search for and seizure of Mr. Boyd's papers, etc.; "unreasonable" *because* for the purpose, and of the tendency, just indicated.

This section authorizes the compulsory search for and virtual seizure of the most private papers. The question is not, what paper did this man produce, but what *can* be done within the scope of this law.

U. S. v. Reese, 92 U. S., 221.
U. S. v. Fox, 95 U. S., 672–3.

Judge WALLACE considers this procedure tantamount to the search and seizures authorized by the Act of March 2, 1867, c. 188, § 2, (14 Stats., 547) because he

held himself concluded by the decisions of his Court, made under that Act of 1867. (Record, 28, lower half.)

Time does not permit us to elaborate, as we wish, the propositions hinted at in the foregoing observations. We shall endeavor to do so orally, citing (*inter alia.*)

Entinck v. Carrington, 19 How. St. Fr., 1029.
Cooley on Lims., 59, 66, 306, and elsewhere.
Murray v. Hoboken, 18 How., 276–7.
1 Kent Com., 612–4; 1 Gr. Ev., § 453.
Story Eq. Pl., §§ 607 and 846. Story on Const.
2 Cow. & Hill's notes, 316–379.
Bellinger v. Peo., 8 Wend., 597.
Henry v. Bank, 1 N. Y., 83.
Hubbard v. Peo., 4 Mich., 129.
Fisher v. McGuire, 1 Gray, 28.
Green v. Briggs, 1 Curts., 311; 3 R. I., 64.

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In the Supreme Court of the United States.

OCTOBER TERM, 1885.

EDWARD A. BOYD AND GEORGE H. Boyd, claimants of thirty-five cases of plate glass, plaintiffs in error,
vs.
THE UNITED STATES.
} No. 983.

BRIEF FOR THE UNITED STATES.

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BRIEF FOR THE UNITED STATES.

This is an information filed by the United States in the district court of the United States for the southern district of New York for the forfeiture of thirty-five cases of plate glass which were imported into New York by the claimants, E. A. Boyd & Sons, on or about the 4th day of June, 1884, upon the ground that the importers, with actual intent to defraud the revenue, made, or attempted to make, an entry of goods by means of fraudulent letters or papers, or by means of false written statements, whereby the United States were deprived of the lawful duties accruing upon such merchandise embraced or referred to in such false letters or statements.

The act which was particularly charged in the evidence was the entry, or an attempt to make an entry, duty free

of said glass by means of a permit obtained from the Secretary of the Treasury by false written statements to the Supervising Architect that the glass was to replace an equal portion of glass which had been furnished from the duty-paid stock of the claimants to the post-office building in Philadelphia, and which, by the understanding between the claimants and the Government, was to be furnished and paid for free of duty. The jury empanneled to try the issue joined having found a verdict for the United States, a judgment was rendered condemning the said thirty-five cases of plate glass as forfeited. A writ of error was sued out by the claimants, and the judgment of the district court was confirmed by the circuit court for the southern district of New York.

It appears from the record that, in the progress of the trail, seven exceptions were taken to the rulings of the district court. The first four relate to the admissibility in evidence of the order of the district court for the production by claimants of the Union Plate Glass Company's invoice of the twenty-nine cases imported per "Baltic;" of the two returns made by the claimants to said order, and of the said invoice, or the duplicate thereof produced in compliance with the said order. We propose to consider these together.

The first objection is made as to the materiality of the evidence referred to, and the second relates to the constitutionality of the fifth section of the act of June 22, 1874. We think that there can be no doubt as to the materiality of the evidence. The transaction in regard to the "Baltic" was a part of the *res gestæ* and could not properly be excluded from the consideration of the jury. The claim-

ants had a contract to supply glass to the Philadelphia post-office. They were allowed to bring in glass free of duty for that specific purpose. They brought in the thirty-five cases in suit for that alleged purpose. The letter to the Supervising Architect stating that twenty-nine cases had already been admitted to supply this contract, was a part of the machinery by which this was accomplished, as was also the letter and telegram to Gannon, their agent, which he was directed to communicate to the Supervising Architect, containing the statement that eighty-one cases had been furnished. The actual amount of glass brought in under free permits was certainly material to the good faith of this importation. No invoice of the importation by the Baltic was on file at the custom-house. No specification was in the entry of the quantity or size of the glass brought on that vessel. No examination of the cases had been made by any Government officer. Therefore there was no evidence in the hands of the Government as to the actual contents of those cases. The only way to procure that evidence was to require the production of the original invoice from the claimants. Under section 5 of the act of June 22, 1874, the district attorney made his written application to the court for an order directing the production of the invoice of that importation. The claimants under that order filed a return that they had made diligent search, but could not find such invoice, and that they were willing to cable to England to the exporting firm from whom they had procured the glass, and obtain a duplicate of the invoice. Thereupon the court directed that the claimants appear and submit to cross-examination on their return.

They did appear, and filed a second return, setting forth that they had cabled for the duplicate invoice; that it was in all respects a correct copy of the original, and they asked that it be accepted in lieu of the original, and by leave of the court this second return was filed. This duplicate invoice was secondary evidence. The claimants could not be put on the stand, and asked if they admitted the correctness of that duplicate invoice. It was necessary to show by what steps it had come into court, and by what means it was vouched for. That was the sole object for which the order and the returns were admitted. We submit that there was no error on the ground that the evidence was immaterial. It was necessary to prove before the jury the precise steps by which that paper was before them before it could be admitted; in other words, it was necessary to prove the order and the first and second return.

As to the unconstitutionalty of the fifth section of the act of June 22, 1874, and the objection that in a suit for forfeiture no evidence can be compelled from the claimants themselves, we submit that the exception was not well taken. The action in this case was not against the claimants; it was a civil action *in rem* for the forfeiture of thirty-five cases of plate glass. The claimants voluntarily intervened. A final decree against the property could not convict them of any crime. They came in and asked to be heard to show why the property should not be condemned. The property was the thing proceeded against as guilty. The proceeding was not a criminal one, but a proceeding *in rem*, whereby the United States was seeking

to have the judgment of the court that the seizure of the property was legal and that it was forfeited.

The Supreme Court in discussing a similar question (The Palmyra, 12 Wheaton, p. 14), says:

> The thing is primarily considered as the offender, or rather the offense is attached primarily to the thing, and this whether the offense be *malum prohibitum* or *malum in se*. * * * Many cases exist where the forfeiture for acts done attaches solely *in rem*, and there is no accompanying penalty *in personem*. Many cases exist where there is both a forfeiture *in rem* and a personal penalty, but in neither class of cases has it ever been decided that the prosecutions were dependent upon each other. But the practice has been, and so this court understands the law to be, that the proceeding *in rem* stands independent of and wholly unaffected by any criminal proceeding *in personam*.

This was the unanimous decision of the Supreme Court, and, as far as we know, has never been overruled or modified. The act of June 22, 1874, was, in its nature, remedial. It had been alleged that gross abuses had grown up under the revenue laws. Some of these abuses were remedied, and, among others, the provisions for the search and seizure of books and papers. The old law on the subject had been many times reviewed by the courts. It was thoroughly considered by Judge Blatchford *in re petition of Platt & Boyd*, reported in 19 Int. Rev. Rec., p. 132, in 1874. The learned judge examines the old provisions of the law, showing that provisions for search and seizure were coeval with the adoption of the fourth and fifth amendments to the Constitution. He sustained the constitutionality of those provisions, and showed that

books and papers had no higher sanctity than other property, and came equally within the provision of the amendments, and at the same time were equally the subject of a search and seizure. This view has been sustained in many cases. (See *United States* vs. *Hughes*, 12 Blatchford, 553; *Stockwell's Cases*, 12 Int. Rev. Rec., 88, and *Platt & Boyd*, 12 Int. Rev. Rec., 132.) Supposing, then, the constitutionality of the old provisions of the law to be established, wherein does the new law differ?

First. It provides that "in all suits and proceedings, other than criminal, arising under the revenue laws of the United States;" that is to say, the provisions of this section contemplate a proceeding in court. It is no arbitrary proceeding on mere suspicion or even on probable cause, but there must be a suit or proceeding pending.

Second. "The attorney representing the Government, whenever in his belief any business book, invoice, or paper belonging to or under the control of the defendant or claimant will tend to prove any allegation made by the United States, may make a written motion particularly describing such book, invoice, or paper, and setting forth the allegations which he expects to prove;" that is, the belief of the attorney of the United States is substituted for the suspicion of the customs officer; the belief must be embodied in a written motion setting forth the specific books and papers and the specific allegation which it is expected to prove; this motion is presented to the court, that is to say, the court in which the suit or proceeding is pending.

Third. "And thereupon the court in which said suit or proceeding is pending may, at its discretion, issue a notice

to the defendant or claimant to produce such book, invoice, or paper in court," that is, the further proceeding in the matter is entirely discretionary with the court on the motion. The court must be satisfied of the propriety of the request. Instead of arbitrary and compulsory provisions, the court must exercise its discretion.

Fourth. "The notice, together with a copy of the motion shall be served formally upon the defendant or claimant by the United States marshal, by delivering to him a certified copy thereof, or otherwise serving the same as original notices of suit in court are served," that is to say, it is a process of the court served by its officers. It is a little more than a *subpœna duces tecum*, but one not issuing, as, of course, on request of the attorney, but issued after a written motion and the exercise of the discretion of the court.

Sixth. "And if the defendant or claimant shall fail or refuse to produce such book, invoice, or paper, in obedience to such notice, the allegation stated in said motion shall be taken as confessed, unless his failure or refusal to produce the same shall be explained to the satisfaction of the court," that is to say, the statute having authorized the order for the production of books and papers, then proceeds to affix a penalty for disobedience to the order. If Congress had not seen proper to prescribe the penalty for disobedience to the order, the court, in its discretion, would have been authorized to enforce compliance, either by fine or imprisonment, or both. In this case the statute has affixed the penalty, and the court can inflict nothing. If the claimants refuse to obey the order of the court, they are in contempt of its authority. The contempt is not

triable by jury; it can only be purged by compliance with the court's order. United States *vs.* Distillery No. 28, 6 Bissell, 483. When the United States courts are not limited by statute their power to enforce obedience to their orders by punishing for contempt is discretionary.

Seventh. "And if produced, the said attorney shall be permitted, under the direction of the court, to make examination (at which examination the defendant or claimant or his agent may be present) of such entries in said book, invoice, or paper as relate to or tend to prove the allegations aforesaid, and may offer the same in evidence in behalf of the United States," that is to say, from the beginning to the end, the proceeding is under the direction and sanction of the court. The court is vested with the discretion, and it is fair to presume it will so exercise it as to do justice to all parties.

In connection with this paragraph of the act, it is suggested that it is in conflict with section 860 of the Revised Statutes, which provides that "No pleading of a party, nor any discovery, nor evidence obtained from a party or witness by means of a judicial proceeding in this or any foreign country, shall be given in evidence, or in any manner used against him or his property or estate in any court of the United States in any criminal proceeding or for the enforcement of any penalty or forfeiture." In considering this section in connection with the act of 1874 and the act of 1867, Judge Hunt held, in 1875, in the case of the *United States* vs. *Hughes*, 12 Blatchford, 553, that section 860 applied to the case of personal testimony only, and that no intention to protect books and papers from

being given in evidence could be understood from the language employed in section 860. He said, "The party has not been sworn, nor has he testified. No evidence has been obtained from the party. No discovery has been obtained from him; he has been perfectly silent. He has disclosed nothing. He has discovered nothing. * * * The statute speaks of evidence or discovery obtained from the party or witness, and not that obtained from the invoices or bills of lading which have been wrested from him. * * * So if books and papers contain entries tending to show an offense against the revenue laws of the country, they are competent evidence on the trial of the party, not as a discovery or evidence obtained from the party, but as facts and circumstances quite independent of the action of the party in making evidence or discovery, quite in opposition, indeed, to his wish or intention in that respect." This view has also been held in *Stockwell's Cases*, 12 Int. Rev. Rec., 88. Besides, section 860 of the Revised Statutes was originally passed February 25, 1868. The act of 1874 is the last expression of the legislative will and must prevail, if it should be considered that there is any repugnancy between the two.

The foregoing reasoning as to the constitutionality of section 5 of the act of 1874 has been sustained by Judge Gresham in *United States* vs. *Distillery* 28, 6th Biss., 483; by Judge Blodgett, in *United States* vs. *Mason*, 6 Biss., 350, and by Judge Dyer, in *United States* vs. *Three Tons of Coal*, 6 Biss., 379, where all the authorities will be found collated.

The fifth exception was taken to the refusal of the court to instruct the jury as follows:

> That the claimants having requested the Supervising Architect to obtain for the goods a free permit, and he having requested the Secretary of the Treasury to issue such permit, and having transmitted to him with that request the necessary data from which the Secretary might have determined whether such permit ought to be granted, the goods in question are not liable to forfeiture even though the jury find such permit to have been improvidently granted.

We submit that this instruction was properly refused, because, in the language of Judge Wallace:

> If the permit of the Secretary of the Treasury was obtained by means of false statements and fraudulent acts, the cause of forfeiture was directly within the language of section 12 of the act of June 22, 1874.

The gist of this instruction is that if the officers of the Government had data by which the attempted fraud might have been detected and prevented, the claimants are not to lose the property, although by fraudulent practices and appliances they put in motion the machinery by which the fraudulent entry was consummated and the delivery of such fraudulent entry almost accomplished. In other words, they are not to suffer for their fraud because some officer of the Government might have discovered it.

The sixth exception was taken to the refusal of the court to instruct the jury as follows:

> The entry in question having been made upon the bill of lading and letter to the Secretary of the Treasury, to entitle plaintiffs to recover the jury must find, upon a fair preponderance of the testimony, a false

> statement in those documents, and that such false statement was procured by the act or acts of the claimants or their agents.

This, we submit, was properly refused. It selects the bill of lading and the letter to the Secretary as the means by which the entry was made, and holds that these documents must contain false statements procured by the act or acts of the claimants or their agents. The request was liable to the objection of being too narrow, and, besides, the court had carefully laid down the law in the charge given, and had clearly pointed out that it was necessary for the jury to find the actual intent. All the letters and statements of the claimants or their agent s to the Supervising Architect were the means by which the entry was made.

The seventh exception was to the refusal of the court to instruct the jury as follows:

> That the mere fact that defendants claimed to be entitled to enter goods free of duties, unaccompanied by any false statements as to the character, quality, and quantity of the goods, is not sufficient to entitle the Government to recover.

The court properly refused to grant this instruction, because it had already been given substantially in the charge of the court to the jury, in which they had been told that it was necessary to find an actual intent to defraud. We submit that there was no error in the decision of the court below, and that it should be affirmed.

Very respectfully,

JOHN GOODE,
Solicitor-General.